(c) If AS–IA finds that the petitioner has not met the conditions of §§ 83.47 through 83.49, AS–IA will issue a denial of authorization to re-petition.

§ 83.60 What notice of the Assistant Secretary's decision will OFA provide?

In addition to publishing notice of AS–IA's decision in the **Federal Register**, OFA will:

(a) Provide copies of the decision to the petitioner and those listed in § 83.51(b)(2); and

(b) Publish the decision on the OFA website.

§ 83.61 When will the Assistant Secretary's decision become effective, and can it be appealed?

AS–IA's decision under § 83.59 will become effective immediately and is not subject to administrative appeal.

(a) A grant of authorization to re-petition is not a final determination granting or denying acknowledgment as a federally recognized Indian tribe. Instead, it allows the petitioner to proceed through the Federal acknowledgment process by submitting a new documented petition for consideration under subpart C of this part, notwithstanding the Department's previous, negative final determination. A grant of authorization to re-petition is not subject to appeal.

(b) A denial of authorization to re-petition is final for the Department and is a final agency action under the Administrative Procedure Act (5 U.S.C. 704).

§ 83.62 What happens if some portion of this subpart is held to be invalid by a court of competent jurisdiction?

If any portion of this subpart is determined to be invalid by a court of competent jurisdiction, the other portions of the subpart remain in effect. For example, if one of the conditions on re-petitioning set forth at §§ 83.47 through 83.49 is held to be invalid, it is the Department's intent that the other conditions remain valid.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–15070 Filed 7–11–24; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102161–23]

RIN 1545–BQ89

Identification of Basket Contract Transactions as Listed Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would identify transactions that are the same as, or substantially similar to, certain basket contract transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions would be required to file disclosures with the IRS and would be subject to penalties for failure to disclose. The proposed regulations would affect participants in these transactions as well as material advisors. This document also provides notice of a public hearing on the proposed regulations.

DATES:

Comments: Written or electronic comments must be received by September 10, 2024.

Public Hearing: A public hearing has been scheduled for September 26, 2024, at 10:00 a.m. ET. Pursuant to Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), the public hearing is scheduled to be conducted in person, but the IRS will provide a telephonic option for individuals who wish to attend or testify at the hearing by telephone. Requests to speak and outlines of topics to be discussed at the public hearing must be received by September 10, 2024. If no outlines are received by September 10, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. ET on September 24, 2024. The hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by 5:00 p.m. on September 23, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–102161–23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG–102161–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Danielle M. Heavey of the Office of Associate Chief Counsel (Financial Institutions & Products), (202) 317–5931 (not a toll-free number); concerning the submission of comments or the hearing, Publications and Regulations Section at (202) 317–6901 (not a toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed additions to 26 CFR part 1 (Income Tax Regulations) under section 6011 of the Internal Revenue Code (Code). The proposed additions identify certain transactions as ''listed transactions'' for purposes of section 6011.

I. Disclosure of Reportable Transactions by Participants and Penalties for Failure To Disclose

Section 6011(a) generally provides that, when required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

Section 1.6011–4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of § 1.6011–4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in § 1.6011–4(e). Reportable transactions are identified in § 1.6011–4 and include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* § 1.6011–4(b)(2) through (6). Section 1.6011–4(b)(2) defines a listed transaction as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by

notice, regulation, or other form of published guidance as a listed transaction. Section 1.6011–4(b)(6) defines a ''transaction of interest'' as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest.

Section 1.6011–4(c)(4) provides that a transaction is ''substantially similar'' if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it may involve different entities or use different Code provisions.

Section 1.6011–4(c)(3)(i)(A) provides that a taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under § 1.6011–4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance may also identify types or classes of persons that will not be treated as participants in a listed transaction. Section 1.6011–4(c)(3)(i)(E) provides that a taxpayer has participated in a transaction of interest if the taxpayer is one of the types or classes of persons identified as participants in the transaction in the published guidance describing the transaction of interest.

Sections 1.6011–4(d) and (e) provide that the disclosure-statement—Form 8886, *Reportable Transaction Disclosure Statement* (or successor form)—must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to IRS's Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

Section 1.6011–4(e)(2)(i) provides that if a transaction becomes a listed transaction or a transaction of interest after the filing of a taxpayer's tax return reflecting the taxpayer's participation in the transaction and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the transaction, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a listed transaction or transaction of interest. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or transaction of interest. The Commissioner of Internal Revenue may also determine the time for disclosure of listed transactions and transactions of interest in the published guidance identifying the transaction.

Participants required to disclose these transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is $5,000 in the case of a natural person and $10,000 in any other case. For listed transactions, the maximum penalty amount is $100,000 in the case of a natural person and $200,000 in any other case. For other reportable transactions, including transactions of interest, the maximum penalty is $10,000 in the case of a natural person and $50,000 in any other case.

Additional penalties may also apply. In general, section 6662A imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer had a requirement to disclose participation in the reportable transaction but did not adequately disclose the transaction in accordance with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. *See* section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item which is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

Participants required to disclose listed transactions who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). That section provides that the time for assessment of any tax with respect to the transaction does not expire before the date that is one year after the earlier of the date the participant discloses the transaction or the date a material advisor discloses the participation pursuant to a written request under section 6112(b)(1)(A).

II. Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure To Disclose

Section 6111(a) provides that ''[e]ach material advisor with respect to any reportable transaction shall make a return . . . setting forth . . . (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return shall be filed not later than the date specified by the Secretary.''

Section 301.6111–3(a) of the Procedure and Administration Regulations provides that each material advisor with respect to any reportable transaction, as defined in § 1.6011–4(b), must file a return as described in § 301.6111–3(d) by the date described in § 301.6111–3(e).

Section 301.6111–3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in § 301.6111–3(b)(3) for the material aid, assistance, or advice. Under § 301.6111–3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011–4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement* (or successor form), as provided in § 301.6111–3(d) and (e). Section 301.6111–3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. The disclosure statement must be sent to

OTSA at the address provided in the instructions for Form 8918 (or successor form).

Section 301.6111–3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor as defined in § 301.6111–3(b). The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Section 6707(a) provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(2), for listed transactions, the penalty is the greater of (A) $200,000, or (B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111. Pursuant to section 6707(b)(1), the penalty for other reportable transactions, including transactions of interest, is $50,000.

A material advisor may also be subject to a penalty under section 6708 for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request. Section 6708(a) provides that the penalty is $10,000 per day for each day of the failure after the 20th day. However, no penalty will be imposed with respect to the failure on any day if such failure is due to reasonable cause.

Additionally, section 6112(a) provides that ''[e]ach material advisor . . . with respect to any reportable transaction . . . shall (whether or not required to file a return under section 6111 with respect to such transaction) maintain (in such manner as the Secretary may by regulations prescribe) a list (1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction and (2) containing such other information as the Secretary may by regulations require.'' Material advisors must furnish such lists to the IRS in accordance with § 301.6112–1(e).

III. Basket Contract Transactions and Notices 2015–73 and 2015–74

The Treasury Department and the IRS are aware of a type of structured financial transaction in which a taxpayer attempts to defer income recognition and to convert short-term capital gain and ordinary income to long-term capital gain using a contract denominated as an option, notional principal contract, forward contract, or other derivative contract (basket contract). On July 8, 2015, the Treasury Department and the IRS released Notice 2015–47, 2015–30 I.R.B. 76, which identified certain basket contracts described in that notice as listed transactions. In addition, on July 8, 2015, the Treasury Department and the IRS released Notice 2015–48, 2015–30 I.R.B. 77, which identified certain basket contracts described in that notice as transactions of interest. Although Notice 2015–47 and Notice 2015–48 did not request comments, some industry comments were submitted expressing concern that difficulty in identifying transactions described in Notice 2015–47 and Notice 2015–48 may cause taxpayers to file disclosures for transactions that were not intended to be treated as listed transactions or transactions of interest.

Responding to these concerns, on October 21, 2015, the Treasury Department and the IRS released Notice 2015–73, 2015–46 I.R.B. 660, which revoked Notice 2015–47 and provided additional details on the types of basket contracts that were identified as listed transactions. Similarly, on October 21, 2015, the Treasury Department and the IRS released Notice 2015–74, 2015–46 I.R.B. 663, which revoked Notice 2015–48 and provided additional details on the types of basket contracts that were identified as transactions of interest. Also in response to commenter concerns, Notice 2015–73 and Notice 2015–74 more specifically describe the tax benefits that identify the transaction as a listed transaction or transaction of interest, respectively.

The background section of Notice 2015–73 provides the following description of one type of structured financial transaction that the Treasury Department and the IRS were concerned about when the Notice was issued: a taxpayer (T) enters into a contract denominated as an option with a counterparty (C) to receive a return based on the performance of a notional basket of referenced actively traded personal property (reference basket). T, or a designee named by T, will either determine the assets that comprise the reference basket or design or select a trading algorithm that determines the assets. While the basket contract remains open, T [1] has the right to change the assets in the reference basket, request that C change the assets in the reference basket, change the trading algorithm, or request that C change the trading algorithm (collectively, discretion). The terms of the basket contract may permit C to reject certain changes requested by T to the assets in the reference basket or the trading algorithm. C, however, generally accepts all or nearly all of the changes requested by T.

When the basket contract is entered into, T typically makes an upfront cash payment to C of between 10 and 40 percent of the value of the assets in the reference basket. To manage its risk under the basket contract, C typically acquires substantially all of the assets in the reference basket at the inception of the contract and acquires and disposes of assets during the term of the contract either when T changes the assets in the reference basket or the trading algorithm provides for such changes. C generally supplies the additional cash required to purchase the assets in the reference basket. The assets in the reference basket would typically generate ordinary income if held directly by T, and short-term gains and losses if purchases and sales of the assets were carried out directly by T.

The basket contract has a stated term of more than one year but contains provisions that in effect allow either party to terminate the contract at any time during the stated contract term with proper notice. The amount that T receives upon settlement of the basket contract is based on the performance of the assets in the reference basket. A common payout formula on the basket contract entitles T to a return equal to the upfront payment, plus net basket gain or minus net basket loss. The net basket gain or net basket loss includes net changes in the values of the assets in the reference basket, together with interest, dividend, and other periodic income on the assets, reduced by C's fee for its role in the transaction. The basket contract typically includes a provision automatically terminating the contract if the amount of the net basket loss reaches the amount of the upfront payment, giving T a cash settlement

[1] When used in this sentence and subsequently with respect to changing or requesting changes to the assets in the reference basket or the trading algorithm, references to ''T'' include T's designee.

amount of zero. The basket contract also may permit or require T to provide additional collateral or otherwise reduce risk in the reference basket if a specified level of risk is reached.

The basket contract typically contains other safeguards to minimize the economic risk to C. For example, C may terminate the basket contract if T violates investment guidelines that are part of the contract. C typically holds the rights associated with legal title to the assets and positions in the reference basket, including voting rights and the right to comingle, lend, pledge, transfer, or otherwise use the assets in the basket without notice to T.

Notice 2015–73 identifies a transaction as being the same as, or substantially similar to, the described basket contract transaction only if: (1) T enters into a transaction with C that is denominated as an option contract; (2) T receives a return based on the performance of the reference basket; (3) substantially all of the assets in the reference basket primarily consist of actively traded personal property as defined under § 1.1092(d)–1(a); (4) the contract is not fully settled at intervals of one year or less; (5) T or T's designee has exercised discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm; and (6) T's tax return for a taxable year ending on or after January 1, 2011 reflects a tax benefit consisting of a deferral of income into a later taxable year or a conversion of ordinary income or short-term capital gain or loss into long-term capital gain or loss.

The basket contracts identified as transactions of interest in Notice 2015–74 closely resemble the basket contracts identified as listed transactions in Notice 2015–73. The primary factual differences between the basket contracts identified in Notice 2015–73 and the basket contracts identified in Notice 2015–74 are: (1) the form of the derivative contract; (2) the type of assets in the reference basket; and (3) the term of the contract. Regarding the form of the derivative contract, Notice 2015–73 identifies only contracts denominated as options, while Notice 2015–74 identifies contracts more generally, including those denominated as options, notional principal contracts, forwards, or other derivative contracts. Regarding the type of assets in the reference basket, the transactions identified in Notice 2015–73 are transactions in which substantially all of the assets in the reference basket primarily consist of actively traded personal property as defined under § 1.1092(d)–1(a), while, with respect to the contracts identified in Notice 2015–74, the assets that comprise the reference basket can include (i) interests in entities that trade securities, commodities, foreign currency, or similar property (hedge fund interests), (ii) securities, (iii) commodities, (iv) foreign currency, or (v) similar property (or positions in such property). Regarding the term of the contract, Notice 2015–73 identifies contracts with a term of more than one year, while Notice 2015–74 identifies contracts with a term of more than one year and contracts that overlap two taxable years.

In the basket contracts identified in Notice 2015–73 and Notice 2015–74, T takes the position that T's short-term trading gains and interest, dividend, and other ordinary income from the performance of the reference basket are deferred until the basket contract terminates and, if the basket contract is held for more than one year, that the entire gain is treated as long-term capital gain. The Treasury Department and the IRS are concerned that taxpayers may be using basket contracts to inappropriately defer income recognition or convert ordinary income or short-term capital gain into long-term capital gain. The Treasury Department and the IRS are also concerned that taxpayers may be mischaracterizing the transaction as an option or certain other derivatives in an effort to avoid application of section 1260 (with respect to constructive ownership transactions), section 1291 (with respect to passive foreign investment companies), or both.

Explanation of Provisions

A. Basket Contract Listed Transactions

1. In General

Since the release of Notice 2015–74, examinations of taxpayers and promoters and information received through disclosures filed in response to Notice 2015–74 have clarified the Treasury Department's and the IRS's understanding of basket contracts identified in Notice 2015–74. The information received indicates that basket contracts identified in Notice 2015–74 have been used to inappropriately defer income recognition or inappropriately convert ordinary income or short-term capital gain into long-term capital gain. In other words, the Treasury Department and the IRS believe that there is now sufficient information to conclude that one or both of the abuses about which the Treasury Department and the IRS are concerned exists in the transactions identified in both Notice 2015–73 and Notice 2015–74. Therefore, the Treasury Department and the IRS are proposing in these proposed regulations to identify both the transactions in Notice 2015–73 and the transactions in Notice 2015–74 as listed transactions. Consistent with this determination, the definition of a basket contract listed transaction in these proposed regulations would include the transactions in Notice 2015–74.

The IRS may assert one or more arguments to challenge the parties' tax characterization of a basket contract, including: (1) that C, in substance, holds the assets in the reference basket as an agent of T and that T is the beneficial owner of the assets for tax purposes; (2) that the basket contract is not an option or other derivative contract for tax purposes; (3) that changes to the assets in the reference basket during the year materially modify the basket contract and result in taxable dispositions of the contract under section 1001 of the Code throughout the term of the contract; (4) that T actually owns separate contractual rights with respect to each asset in the reference basket such that each change to assets in the basket results in a taxable disposition of a contractual right under section 1001 with respect to the asset affected by the change; (5) that T is mischaracterizing the transaction as an option or certain other derivatives in an effort to avoid application of section 1260 (with respect to constructive ownership transactions), section 1291 (with respect to passive foreign investment companies), or both; (6) that a change from accounting for basket contracts as derivative contracts with respect to the referenced assets to accounting for the contracts in a manner consistent with T's beneficial ownership of the referenced assets results in one or more accounting method changes within the meaning of section 446; and (7) any accounting method change generally will be implemented with a section 481(a) adjustment that takes on the character of the item to which the adjustment relates. The IRS may also assert other arguments supporting the conclusion that T is the beneficial owner of the assets in the reference basket for tax purposes. Furthermore, the IRS may challenge, including by asserting judicial doctrines, claimed tax positions under sections 871, 881, and 882 or other provisions of the Code, and may assert failures to comply with reporting obligations associated with investments in passive foreign investment companies and withholding and reporting obligations under chapters 3 and 4 of the Code.

2. Definition of Basket Contract Listed Transaction

Proposed § 1.6011–16(a) would provide that a transaction that is the same as, or substantially similar to, a transaction described in proposed § 1.6011–16(c) is a listed transaction for purposes of § 1.6011–4(b)(2), except as provided in proposed § 1.6011–16(d).

Proposed § 1.6011–16(b) would provide definitions of terms used to describe basket contract listed transactions, including counterparty (or C), taxpayer (or T), designee, discretion, tax benefit, and reference basket.

The term designee, with respect to a T having discretion or having exercised discretion, is defined in proposed § 1.6011–16(b)(3) as any person who is: T's agent under principles of agency law; compensated by T for suggesting, requesting, or determining changes in the assets in the reference basket or the trading algorithm; or selected by T to suggest, request, or determine changes in the assets in the reference basket or the trading algorithm. A person would not, however, be treated as compensated or selected by T as a result of: the person's position as an investment advisor, officer, or employee of an entity, such as a mutual fund, when the entity's publicly offered securities are included in the reference basket; or the person's use of, the person's payment of a licensing fee for the right to use, or the person's authority to suggest, request, or determine changes in the assets included in a widely used and publicly quoted index that is based on objective financial information or an index that tracks a broad market or a market segment.

With respect to the term discretion, proposed § 1.6011–16(b)(4) would provide that discretion includes T's right to change, either directly or through a request to C, the assets in the reference basket or the trading algorithm, even if the terms of the transaction permit C to reject certain changes requested by T to the assets in the reference basket or the trading algorithm. T would not be treated as having discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm if changes in the assets in the reference basket or the trading algorithm were made according to objective instructions, operations, or calculations that were disclosed at the inception of the transaction (the rules) and T does not have the right to alter or amend the rules during the term of the transaction or to deviate from the assets in the reference basket or the trading algorithm selected in accordance with the rules. For these purposes, T would not be treated as having the right to alter or amend the rules solely because T has the authority: to exercise routine judgment in the administration of the rules, which would not include deviations or alterations to the rules that are designed to improve the financial performance of the reference basket; to correct errors in the implementation of the rules or calculations made pursuant to the rules; or to make an adjustment to respond to an unanticipated event outside of T's control, such as a stock split, merger, listing or delisting, nationalization, or insolvency of a component of a basket, a disruption in the financial markets for specific assets or in a particular jurisdiction, regulatory compliance requirement, force majeure, or any other unanticipated event of similar magnitude and significance.

The term tax benefit would be defined in proposed § 1.6011–16(b)(5) as a deferral of income into a later taxable year or a conversion of ordinary income or short-term capital gain or loss into long-term capital gain or loss.

The term reference basket would be defined in proposed § 1.6011–16(b)(6) as a notional basket of assets that may include: actively traded personal property as defined under § 1.1092(d)–1(a); interests in entities that trade securities, commodities, foreign currency, digital assets as defined in section 6045(g)(3)(D), or similar property; securities; commodities; foreign currency; digital assets as defined in section 6045(g)(3)(D); or similar property (or positions in such property).

The types of assets included in the definition of reference basket in these proposed regulations would be expanded from the types set forth in Notice 2015–73 and Notice 2015–74. Specifically, since the publication of Notice 2015–73 and Notice 2015–74, digital assets have grown in popularity as an investment or trading asset. Taxpayers can trade digital assets directly and also trade digital assets through derivatives, including futures and option contracts, on digital assets. The Treasury Department and the IRS believe that derivatives on digital assets raise the same issues as derivatives on other types of assets. As a result, the types of assets in the definition of reference basket in these proposed regulations include digital assets. No inference is intended as to whether a digital asset should or should not be properly classified for Federal income tax purposes as a security, commodity, option, securities futures contract, regulated futures contract, or forward contract. Similarly, the potential characterization of digital assets as securities, commodities, or derivatives for purposes of any other legal regime, such as the Federal securities laws and the Commodity Exchange Act, is outside the scope of these proposed regulations.

A transaction would be described in proposed § 1.6011–16(c) if it meets the five elements described in proposed § 1.6011–16(c)(1) through (5). These five elements are as follows:

(i) T enters into a contract with C, including a contract denominated as an option, notional principal contract (as defined in § 1.446–3(c)(1)(i)), forward contract, or other derivative contract to receive a return based on the performance of a reference basket;

(ii) The contract has a stated term of more than one year, or overlaps two of T's taxable years;

(iii) T or T's designee has exercised discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm;

(iv) T's tax return for a taxable year ending on or after January 1, 2011, reflects a tax benefit described in proposed § 1.6011–16(b)(5) with respect to the transaction; and

(v) The transaction is not described in proposed § 1.6011–16(d).

3. Exceptions

Proposed § 1.6011–16(d) would provide that a transaction is not the same as, or substantially similar to, the transaction described in proposed § 1.6011–16(c) if any of the three exceptions described in proposed § 1.6011–16(d)(1) through (3) applies. Certain exceptions would apply only to C. Proposed § 1.6011–16(d) would provide that these three exceptions are as follows:

(i) The contract is traded on a national securities exchange that is regulated by the Securities and Exchange Commission or a domestic board of trade regulated by the Commodity Futures Trading Commission, or a foreign exchange or board of trade that is subject to regulation by a comparable regulator.

(ii) The contract is treated as a contingent payment debt instrument under § 1.1275–4 (including a short-term contingent payment debt instrument) or a variable rate debt instrument under § 1.1275–5.

(iii) With respect to C, if:

(A) T represents to C in writing under penalties of perjury that none of T's tax returns for taxable years ending on or after January 1, 2011, has reflected or will reflect a tax benefit of the transaction that is described in proposed § 1.6011–16(b)(5); or

(B) C has established that T is a nonresident alien that is not engaged in a U.S. trade or business or a foreign corporation that is not engaged in a U.S. trade or business by obtaining a valid withholding certificate (W–8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals),* or W–8BEN–E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)* (or successor forms)) upon which it may rely under the requirements of § 1.1441–1 from T as the beneficial owner of the payments made or to be made under the basket contract, or in the case of payments made outside of the U.S. on offshore obligations, by obtaining documentary evidence described in § 1.1441–1(c)(17) upon which it is permitted to rely.

4. Participants

Proposed § 1.6011–16(e) would provide the rules for determining who is a participant in a listed transaction identified in proposed § 1.6011–16(a). The rules provided in proposed § 1.6011–16(e) generally are consistent with Notice 2015–73 and Notice 2015–74, which included rules regarding the treatment of a general partner of a partnership or a managing member of a limited liability company as a participant. However, because an entity may be treated as a partnership for Federal tax purposes but not have one or more general partners or managing members, proposed § 1.6011–16(e) would provide that in such a case each partner is a participant for purposes of § 1.6011–4(c)(3)(i)(A).

B. Effect of Becoming a Listed Transaction Under These Regulations

If these proposed regulations are finalized as proposed, taxpayers that participate in the basket contract transactions that would be identified as listed transactions by these proposed regulations, and persons who act as material advisors with respect to these transactions, would be required to disclose these transactions in accordance with the final regulations and the regulations issued under sections 6011 and 6111. Material advisors also would have list maintenance requirements under the final regulations and the regulations issued under section 6112. Participants required to disclose these transactions under § 1.6011–4 who fail to do so would be subject to penalties under section 6707A. Participants required to disclose listed transactions under § 1.6011–4 who fail to do so would also be subject to an extended period of limitations under section 6501(c)(10). Material advisors required to disclose these transactions under section 6111 who fail to do so would be subject to the penalty under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) would be subject to the penalty under section 6708(a). In addition, the IRS might impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the section 6694 penalty for understatements of a taxpayer's liability by a tax return preparer, the section 6700 penalty for promoting abusive tax shelters, and the section 6701 penalty for aiding and abetting understatement of a tax liability.

Taxpayers who have filed a tax return (including an amended return (or Administrative Adjustment Request (AAR) for certain partnerships)) reflecting their participation in these transactions prior to [date of publication of final regulations in the **Federal Register**] would be required to disclose the transactions as provided in § 1.6011–4(d) and (e) provided that the period of limitations for assessment of tax, including any applicable extensions, for any taxable year in which the taxpayer participated in the transaction has not ended on or before [date of publication of final regulations in the **Federal Register**].

Taxpayers who have filed a tax return reflecting their participation in a basket contract transaction identified as a listed transaction in Notice 2015–73 and in the final regulations before [date of publication of final regulations in the **Federal Register**] and who have not disclosed the transaction pursuant to Notice 2015–73 would be required by the final regulations and § 1.6011–4(e)(2)(i) to file a disclosure within 90 calendar days after [date of publication of final regulations in the **Federal Register**] if the period of limitations for assessment for any taxable year in which the taxpayer participated in the transaction remains open.

A participant in a transaction that is a basket contract listed transaction that has previously filed a disclosure statement with OTSA pursuant to Notice 2015–73 regarding the transaction would be treated as having disclosed the transaction pursuant to the final regulations for taxable years for which the taxpayer filed returns before [date of publication of final regulations in the **Federal Register**]. However, if a taxpayer described in the preceding sentence participates in the basket contract listed transaction in a taxable year for which the taxpayer files a return on or after [date of publication of final regulations in the **Federal Register**], the taxpayer would be required to file a disclosure statement with OTSA at the same time the taxpayer files its return for the first such taxable year.

A participant in a transaction that is a basket contract listed transaction under the proposed regulations and that is identified as a transaction of interest under Notice 2015–74 would be required to file a disclosure statement with OTSA when required to do so under the rules provided in § 1.6011–4(e)(2)(i) for disclosure of listed transactions, notwithstanding that the participant has previously disclosed the transaction to OTSA pursuant to Notice 2015–74.

In addition, material advisors would have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding § 301.6111–3(b)(4)(i) and (ii), material advisors would be required to disclose only if they have made a tax statement on or after the date that is 6 years before [date of publication of final regulations in the **Federal Register**].

A material advisor with respect to a transaction that is a basket contract listed transaction would be required to file a disclosure statement with OTSA when required to do so under § 301.6111–3(e), regardless of whether the material advisor has previously disclosed the transaction to OTSA pursuant to Notice 2015–73 or Notice 2015–74.

Proposed Applicability Dates

Proposed § 1.6011–16 would identify transactions that are the same as, or substantially similar to, the basket contract transactions described in proposed § 1.6011–16(c) as listed transactions effective as of [date of publication of final regulations in the **Federal Register**].

Effect on Other Documents

This document obsoletes Notice 2015–74, 2015–46 I.R.B. 663, as of July 12, 2024. These proposed regulations do not obsolete, revoke, or modify Notice 2015–73, 2015–46 I.R.B. 660.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject

to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The collection of information contained in these proposed regulations is reflected in the collection of information for Forms 8886 and 8918 that have been reviewed and approved by OMB in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545–1800 and 1545–0865.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for the Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 is already contained in the burden associated with the control numbers for the forms and is unchanged.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

III. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The basis for these proposed regulations relates to the transactions described in Notice 2015–73 and Notice 2015–74. The following charts set forth the gross receipts of respondents to Notice 2015–73 and Notice 2015–74, based on data for the tax year 2021. The number of small entities affected in all cases is expected to be less than 50.

Receipts	Firms (%)	Filings (%)
Notice 2015–73 Respondents by Size		
Under 25M	60	10
Over 25M	40	90
Notice 2015–74 Respondents by Size		
Under 25M	75	33
Over 25M	25	67

These charts show that the majority of respondents reported gross receipts under $25 million. The proposed regulations will not have a significant economic impact on these entities because the proposed regulations implement sections 6111 and 6112 and § 1.6011–4 by specifying the manner in which and the time at which an identified basket contract transaction must be reported. Accordingly, because the proposed regulations are limited in scope to time and manner of information reporting and definitional information, the economic impact of the proposal is expected to be minimal.

Further, the Treasury Department and the IRS expect that the reporting burden is low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping; 4 hours, 50 minutes for learning about the law or the form; and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is $59.45 (2021 dollars) per hour for Notice 2015–73 and $55.67 (2021 dollars) per hour for Notice 2015–74. Thus, it is estimated that a respondent will incur costs of approximately $1,873.67 per filing for Notice 2015–73 and $1,754.53 per filing for Notice 2015–74. Disclosures received to date by the Treasury Department and the IRS in response to the reporting requirements of Notice 2015–73 and Notice 2015–74 indicate that this small amount will not pose any significant economic impact for those taxpayers who would be required to disclose if the proposed regulations were finalized as proposed.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section.

The Treasury Department and the IRS request comments on all aspects of the proposed regulations. The Treasury Department and the IRS are aware that there have been developments in the financial markets since Notice 2015–73 and Notice 2015–74 were issued, and that taxpayers may have questions about how certain definitions or terms in the notices apply to transactions of a kind that did not exist at that time. Accordingly, the Treasury Department and the IRS are soliciting comments in order to better understand these more recent transactions and to determine whether any responsive changes should be made to the proposed regulations. Any comment should explain how any proposal contained in the comment would be consistent with the objective of these proposed regulations to require disclosure of transactions involving the abuse described in these proposed regulations to enable the Treasury Department and the IRS to learn about abusive transactions.

The Treasury Department and the IRS specifically request comments on the following:

1. Are there types of transactions to which the proposed regulations may apply that did not exist when Notice 2015–73 and Notice 2015–74 were issued?

2. Specific examples of indices that should qualify as a ''widely used and publicly quoted index that is based on objective financial information'' (*see* proposed § 1.6011–16(b)(3)(ii)(B)).

3. Specific examples of indices that should be treated as one that ''tracks a broad market or a market segment'' (*see* proposed § 1.6011–16(b)(3)(ii)(B)).

4. Specific examples of ''objective instructions, operations or calculations'' (*see* proposed § 1.6011–16(b)(4)(ii)(A)).

5. Specific examples of the exercise of ''routine judgment in the administration of the rules'' (*see* proposed § 1.6011–16(b)(4)(iii)(A)).

6. Are there changes that could be made to clarify how to apply the terms described in requests 2 through 5, above, to specific types of transactions?

7. Are there alternative rules that should apply to determine which persons treated as partners in an arrangement or entity that is treated as a partnership for Federal income tax purposes but that does not have one or more general partners or managing members should be treated as participants in a transaction carried out by the partnership?

All comments will be made available at *https://www.regulations.gov.* Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for September 26, 2024, beginning at 10:00 a.m. ET in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by September 10, 2024. A period of 10 minutes will be allotted for each person making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by September 10, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–102161–23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–102161–23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–102161–23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–102161–23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–102161–23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–102161–23. Requests to attend the public hearing must be received by 5:00 p.m. ET on September 24, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–102161–23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–102161–23. Requests to attend the public hearing must be received by 5:00 p.m. EST on September 24, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by at least September 23, 2024.

Statement of Availability of IRS Documents

The notices cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these proposed regulations is Danielle M. Heavey, Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.6011–16 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.6011–16 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011.

* * * * *

■ **Par. 2.** Section 1.6011–16 is added to read as follows:

§ 1.6011–16 Basket contract listed transaction.

(a) *Identification as listed transaction.* Transactions that are the same as, or substantially similar to, transactions described in paragraph (c) of this section are identified as listed transactions for purposes of § 1.6011–4(b)(2).

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Counterparty.* The term *counterparty* or *C* means a person who enters into a contract described in paragraph (c) of this section with the taxpayer.

(2) *Taxpayer.* The term *taxpayer* or *T* means—

(i) A taxpayer as defined in § 1.6011–4(c)(1) that enters into a contract described in paragraph (c) of this section with the counterparty; and

(ii) With respect to any reference to T having discretion, or having exercised discretion, T's designee.

(3) *Designee*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, the term *designee,* with respect to a T having discretion or having exercised discretion, means any person who is—

(A) T's agent under principles of agency law;

(B) Compensated by T for suggesting, requesting, or determining changes in the assets in the reference basket or the trading algorithm; or

(C) Selected by T to suggest, request, or determine changes in the assets in the reference basket or the trading algorithm.

(ii) *Exceptions.* A person will not be treated as compensated by T under paragraph (b)(3)(i)(B) of this section, or selected by T under paragraph (b)(3)(i)(C) of this section, as a result of:

(A) The person's position as an investment advisor, officer, or employee of an entity, such as a mutual fund, when the entity's publicly offered securities are included in the reference basket; or

(B) The person's use of, the person's payment of a licensing fee for the right to use, or the person's authority to suggest, request, or determine changes in the assets included in a widely used and publicly quoted index that is based on objective financial information or an index that tracks a broad market or a market segment.

(4) *Discretion*—(i) *In general.* Except as provided in paragraphs (b)(4)(ii) and (iii) of this section, the term *discretion* includes T's right to change, either directly or through a request to C, the assets in the reference basket or the trading algorithm, even if the terms of the transaction permit C to reject certain changes requested by T to the assets in the reference basket or the trading algorithm.

(ii) *Changes made according to rules that T cannot amend or alter.* T will not be treated as having discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm if—

(A) Changes in the assets in the reference basket or the trading algorithm are made according to objective instructions, operations, or calculations that are disclosed at the inception of the transaction (rules); and

(B) T does not have the right to alter or amend the rules during the term of the transaction or to deviate from the assets in the reference basket or the trading algorithm selected in accordance with the rules.

(iii) *Exception for certain rights.* T will not be treated as having the right to alter or amend the rules for purposes of paragraph (b)(4)(ii)(B) of this section solely because T has the authority to—

(A) Exercise routine judgment in the administration of the rules, which does not include deviations or alterations to the rules that are designed to improve the financial performance of the reference basket;

(B) Correct errors in the implementation of the rules or calculations made pursuant to the rules; or

(C) Make an adjustment to respond to an unanticipated event outside of T's control, such as a stock split, merger, listing or delisting, nationalization, or insolvency of a component of a basket, a disruption in the financial markets for specific assets or in a particular jurisdiction, a regulatory compliance requirement, force majeure, or any other unanticipated event of similar magnitude and significance.

(5) *Tax benefit.* The term *tax benefit* means a deferral of income into a later taxable year or a conversion of ordinary income or short-term capital gain or loss into long-term capital gain or loss.

(6) *Reference basket.* The term *reference basket* means a notional basket of assets that may include:

(i) Actively traded personal property as defined under § 1.1092(d)–1(a);

(ii) Interests in entities that trade securities, commodities, foreign currency, digital assets as defined in section 6045(g)(3)(D) of the Internal Revenue Code, or similar property;

(iii) Securities;

(iv) Commodities;

(v) Foreign currency;

(vi) Digital assets as defined in section 6045(g)(3)(D); or

(vii) Similar property (or positions in such property).

(c) *Transaction description.* A transaction is described in this paragraph (c) if—

(1) T enters into a contract with C, including a contract denominated as an option contract, notional principal contract (as defined in § 1.446–3(c)(1)(i)), forward contract, or other derivative contract, to receive a return based on the performance of a reference basket;

(2) The contract has a stated term of more than one year, or overlaps two or more of T's taxable years;

(3) T has exercised discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm;

(4) T's tax return for a taxable year ending on or after January 1, 2011, reflects a tax benefit with respect to the transaction; and

(5) The transaction is not described in paragraph (d) of this section.

(d) *Exceptions.* A transaction is not the same as, or substantially similar to, the transaction described in paragraph (c) of this section if it is described in any of paragraphs (d)(1) through (3) of this section.

(1) The contract is traded on a national securities exchange that is regulated by the Securities and Exchange Commission or a domestic board of trade regulated by the Commodity Futures Trading Commission, or a foreign exchange or board of trade that is subject to regulation by a comparable regulator.

(2) The contract is treated as a contingent payment debt instrument under § 1.1275–4 (including a short-term contingent payment debt instrument) or a variable rate debt instrument under § 1.1275–5.

(3) With respect to C, a transaction is not the same as, or substantially similar to, the transaction described in paragraph (c) of this section if—

(i) T represents to C in writing under penalties of perjury that none of T's tax returns for taxable years ending on or after January 1, 2011, has reflected or will reflect a tax benefit with respect to the transaction; or

(ii) C has established that T is a nonresident alien that is not engaged in a U.S. trade or business or a foreign corporation that is not engaged in a U.S. trade or business by obtaining a valid withholding certificate (W–8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals),* or W–8BEN–E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting* (*Entities*) (or successor forms)) upon which it may rely under the requirements of § 1.1441–1 from T as the beneficial owner of the payments made or to be made under the basket contract, or in the case of payments made outside of the U.S. on offshore obligations, by obtaining documentary evidence described in § 1.1441–1(c)(17) upon which it is permitted to rely.

(e) *Special participation rules.* For purposes of § 1.6011–4(c)(3)(i)(A), for each year in which a transaction identified in paragraph (a) of this section is open, only the following parties are treated as participating in the listed transaction identified in this section:

(1) The taxpayer;

(2) If the taxpayer is treated as a partnership for Federal tax purposes and has one or more general partners or managing members, each general partner or managing member of the taxpayer;

(3) If the taxpayer is treated as a partnership for Federal tax purposes and does not have a general partner or managing member, each partner in the partnership;

(4) The counterparty to the contract.

(f) *Applicability date*—(1) *In general.* This section identifies transactions that are the same as, or substantially similar

to, the transactions described in paragraph (c) of this section as listed transactions for purposes of § 1.6011–4(b)(2) effective on [date of publication of final regulations in the **Federal Register**].

(2) *Obligations of participants with respect to prior periods.* Taxpayers who have filed a tax return (including an amended return) reflecting their participation in transactions described in paragraph (a) of this section prior to [date of publication of final regulations in the **Federal Register**], must disclose the transactions as required by § 1.6011–4(d) and (e) provided that the period of limitations for assessment of tax (as determined under section 6501 of the Code, including section 6501(c)) for any taxable year in which the taxpayer participated has not ended on or before [date of publication of final regulations in the **Federal Register**]. However, taxpayers who have filed a disclosure statement regarding their participation in the transaction with the Office of Tax Shelter Analysis pursuant to Notice 2015–73, 2015–46 I.R.B. 660, will be treated as having made the disclosure with respect to the transaction pursuant to the final regulations for the taxable years for which the taxpayer filed returns before [date of publication of final regulations in the **Federal Register**]. If a taxpayer described in the preceding sentence participates in the basket contract listed transaction in a taxable year for which the taxpayer files a return on or after [date of publication of final regulations in the **Federal Register**], the taxpayer must file a disclosure statement with the Office of Tax Shelter Analysis at the same time the taxpayer files its return for the first such taxable year.

(3) *Obligations of material advisors with respect to prior periods.* Material advisors defined in § 301.6111–3(b) of this chapter who have previously made a tax statement with respect to a transaction described in paragraph (a) of this section have disclosure and list maintenance obligations as described in §§ 301.6111–3 and 301.6112–1 of this chapter, respectively. Notwithstanding § 301.6111–3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after the date that is six years before [date of publication of final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner.

[FR Doc. 2024–14787 Filed 7–11–24; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0625; FRL–11613–01–R9]

Air Plan Revisions; California; Eastern Kern Air Pollution Control District; Tehama County Air Pollution Control District; San Diego County Air Pollution Control District Emissions Statement Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions, under the Clean Air Act (CAA or ''Act''), to portions of the California State Implementation Plan (SIP) regarding emissions statements (ES) requirements for the 2015 ozone national ambient air quality standards (NAAQS). In addition, we are proposing that the following California nonattainment areas (NAAs) meet the ES requirements for the 2015 ozone NAAQS: Tuscan Buttes, Kern County (Eastern Kern), and San Diego County. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before August 12, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0625 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (*e.g.,* audio or video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Sina Schwenk-Mueller, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4100 or by email at *schwenkmueller.sina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

The California Air Resources Board submitted rules for the the Eastern Kern Air Pollution Control District (APCD), Tehama County APCD, and San Diego County APCD portions of the California SIP.

Table 1 lists the rules submitted for approval into the SIP with the dates that the rules were adopted or revised by the local or State air agencies and submitted by the States to fulfill CAA section 182(a)(3)(B) Emissions Statements (''section 182(a)(3)(B)'') requirements.