airspace extending from the surface for Boire Field Airport, Nashua, NH by replacing the reference to ''Manchester VOR/DME'' which is scheduled to be decommissioned September 5, 2024. This action would not change the airspace boundaries or operating requirements.

Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'', prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6004 Class E Airspace Areas Extending Upward From the Surface of the Earth.

* * * * *

ANE NH E4 Nashua, NH [Amended]

Boire Field Airport, NH
(Lat. 42°46′57″ N, long. 71°30′51″ W)

That airspace extending upward from the surface within 1.1 miles on each side of the Boire Field Airport 67° bearing extending from the 5-mile radius to 8.4 miles northeast of Boire Field Airport.

* * * * *

Issued in College Park, Georgia, on March 18, 2024.

Patrick Young,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2024–06102 Filed 3–22–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–108761–22]

RIN 1545–BQ58

Charitable Remainder Annuity Trust Listed Transaction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed regulations that would identify certain charitable remainder annuity trust (CRAT) transactions and substantially similar 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 but provide that certain organizations whose only role or interest in the transaction is as a charitable remainderman will not be treated as participants in the transaction or as parties to a prohibited tax shelter transaction subject to excise taxes and disclosure requirements. Finally, this document provides notice of a public hearing on the proposed regulations.

DATES:

Comments: Electronic or written comments must be received by May 24, 2024.

Public Hearing: A public hearing on the proposed regulation is scheduled for July 11, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by May 24, 2024. If no outlines are received by May 24, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. on July 9, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://regulations.gov* (indicate IRS and REG–108761–22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. 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 availability any comments submitted to the IRS's public docket. Send paper submission to CC:PA:01:PR (REG–108761–22) room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Charles D. Wien of the Office of Associate Chief Counsel (Passthroughs & Special Industries), (202) 317–5279; concerning submissions of comments and requests for hearing, Vivian Hayes at (202) 317–6901 (not toll-free numbers) or by sending an email to *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 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(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 also may identify types or classes of persons that will not be treated as participants in a listed transaction.

Section 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 the 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 after the filing of a taxpayer's tax return reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the listed 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. 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. The Commissioner of Internal Revenue (Commissioner) also may determine the time for disclosure of listed transactions 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 of the Code. 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 a listed transaction, the maximum penalty amount is $100,000 in the case of a natural person and $200,000 in any other case.

Additional penalties also may apply. In general, section 6662A of the Code 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 that 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 also are subject to an extended period of limitations under section 6501(c)(10) of the Code. That section provides that the time for assessment of any tax with respect to the transaction shall 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) of the Code.

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

Section 6111(a) provides that each 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 the 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 the 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's receipt of the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Section 6707(a) of the Code 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 that is provided with respect to the listed transaction before the date the return is filed under section 6111.

Additionally, section 6112(a) provides that each 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 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).

A material advisor may be subject to a penalty under section 6708 of the Code 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.

III. Tax-Exempt Entities as Parties to Prohibited Tax Shelter Transactions

Section 4965 of the Code is intended to deter certain ''tax-exempt entities'' (as defined in section 4965(c)) from facilitating ''prohibited tax shelter transactions,'' which include listed transactions. Section 4965(a)(1), in part, imposes an excise tax on a tax-exempt entity for the taxable year in which the tax-exempt entity becomes a party to a transaction that is a ''prohibited tax shelter transaction'' at the time it becomes a party to the transaction, and for any subsequent taxable year, in the amount determined under section 4965(b)(1) (section 4965 tax). Tax-exempt entities subject to the section 4965 tax are listed in section 4965(c)(1) through (3) and include, among others, entities and governmental units described in sections 501(c) and 170(c) of the Code (other than the United States). A tax-exempt entity that is a party to a prohibited tax shelter transaction generally also is subject to various reporting and disclosure obligations.

Additionally, section 4965(a)(2) imposes an excise tax on an ''entity manager'' if the manager approves the tax-exempt entity as a party (or otherwise causes the tax-exempt entity to be a party) to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. The amount of this excise tax is determined under section 4965(b)(2) (entity manager tax).

A. The Section 4965 Tax

The amount of the section 4965 tax owed by a tax-exempt entity depends on whether the tax-exempt entity knows, or has reason to know, that a transaction is a prohibited tax shelter transaction at the time the entity becomes a party to the transaction. A tax-exempt entity is treated as knowing or having reason to know that a transaction is a prohibited tax shelter transaction if one or more of its entity managers knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity manager(s) approved the tax-exempt entity as (or otherwise caused the entity to be) a party to the transaction.[1] The tax-exempt entity also is attributed the knowledge or reason to know of certain entity managers—those persons with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization—even if the entity manager does not approve the entity as (or otherwise cause the entity to be) a party to the transaction.

Section 53.4965–4(a)(1) provides that a tax-exempt entity is a ''party'' to a prohibited tax shelter transaction if it facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status. In addition, under § 53.4965–4(a)(2) and (b), the Secretary may issue published guidance to identify tax-exempt entities by type, class, or role that will or will not be treated as parties to a prohibited tax shelter transaction.

If the tax-exempt entity unknowingly becomes a party to a prohibited tax shelter transaction, the section 4965 tax generally equals the greater of (1) the product of the highest rate of tax under section 11 of the Code (currently 21 percent) and the tax-exempt entity's net income attributable to the prohibited tax shelter transaction, or (2) the product of the highest rate of tax under section 11 and 75 percent of the proceeds received by the tax-exempt entity that are attributable to the prohibited tax shelter transaction. If the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the tax-exempt entity became a party to the transaction, the section 4965 tax increases to the greater of (1) 100 percent of the tax-exempt entity's net income attributable to the prohibited tax shelter transaction, or (2) 75 percent of the tax-exempt entity's proceeds attributable to the prohibited tax shelter transaction.

The terms ''net income'' and ''proceeds'' are defined in § 53.4965–8. In general, a tax-exempt entity's net income attributable to a prohibited tax shelter transaction is its gross income derived from the transaction, reduced by those deductions that are attributable to the transaction and that would be allowed by chapter 1 of the Code (chapter 1) if the tax-exempt entity were treated as a taxable entity for this purpose, and further reduced by the taxes imposed by subtitle D of the Code (other than the section 4965 tax) with respect to the transaction. In the case of a tax-exempt entity that is a party to the transaction by reason of facilitating a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent,

[1] Section 53.4965–6 of the Foundation and Similar Excise Tax Regulations (26 CFR part 53) provides factors to be considered in determining whether an entity manager knows or has reason to know that a transaction is a prohibited tax shelter transaction.

or tax-favored status, the term ''proceeds,'' solely for purposes of section 4965, means the gross amount of the tax-exempt entity's consideration for facilitating the transaction, not reduced for any costs or expenses attributable to the transaction. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for purposes of section 4965. In addition, for all tax-exempt entities that are parties to a prohibited tax shelter transaction, any amount that is a gift or a contribution to a tax-exempt entity and that is attributable to a prohibited tax shelter transaction is treated as proceeds for purposes of section 4965, unreduced by any associated expenses.

B. Entity Manager Tax

The amount of the entity manager tax determined under section 4965(b)(2) on an entity manager (as defined in section 4965(d)) equals $20,000 for each instance that the manager approves the tax-exempt entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. This liability is not joint and several.

C. Disclosures

Section 53.6011–1 requires that a tax-exempt entity subject to the section 4965 excise tax must file Form 4720, *Return of Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code,* to report the liability and pay the tax due under section 4965(a)(1). Under § 1.6033–5, a tax-exempt entity that is a party to a prohibited tax shelter transaction must file Form 8886–T, *Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction,* to disclose that it is a party to a prohibited tax shelter transaction, the identity of any other party (whether taxable or tax-exempt) to such transaction that is known to the tax-exempt entity, and certain other information. Under § 1.6033–2, if the tax-exempt entity is required to file Form 990, *Return of Organization Exempt From Income Tax,* it must disclose on that form that it is a party to a prohibited tax shelter transaction, whether any taxable party notified the tax-exempt entity that it was or is a party to a prohibited tax shelter transaction, and whether the tax-exempt entity filed Form 8886–T.

Section 6011(g) and § 301.6011(g)–1 provide that any taxable party to a prohibited tax shelter transaction must disclose to each tax-exempt entity that the taxable party knows or has reason to know is a party to such transaction that the transaction is a prohibited tax shelter transaction.

IV. Charitable Remainder Annuity Trusts (CRATs)

For purposes of section 664 of the Code, section 664(d)(1) provides that a charitable remainder annuity trust (CRAT) is a trust:

(A) From which a sum certain (which is not less than 5 percent nor more than 50 percent of the initial fair market value (FMV) of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c), and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals;

(B) From which no amount other than the payments described in section 664(d)(1)(A) and other qualified gratuitous transfers described in section 664(d)(1)(C) may be paid to or for the use of any person other than an organization described in section 170(c);

(C) Whose remainder interest, following the termination of the payments described in section 664(d)(1)(A), is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employment securities (as defined by section 664(g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7) of the Code) in a qualified gratuitous transfer (as defined by 664(g)); and

(D) Whose remainder interest has a value (determined under section 7520) of at least 10 percent of the initial net FMV of all property placed in the trust.

Section 664(b) provides, in part, that amounts distributed by a CRAT are considered as having the following characteristics in the hands of a beneficiary to whom the annuity described in section 664(d)(1)(A) is paid:

(1) First, as amounts of income (other than gains, and amounts treated as gains, from the sale or other disposition of capital assets) includible in gross income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years;

(2) Second, as a capital gain to the extent of the capital gain of the trust for the year and the undistributed capital gain of the trust for prior years;

(3) Third, as other income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years; and

(4) Fourth, as a distribution of trust corpus.

Under section 664(c)(1), a CRAT is not subject to any tax imposed by subtitle A of the Code. Section 664(c)(2), in part, imposes an excise tax on a CRAT that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F of chapter 1 applies to such trust) for a taxable year. That excise tax is equal to the amount of such unrelated business taxable income.

V. Tax Avoidance Transactions Using a CRAT

The Treasury Department and the IRS are aware of transactions in which taxpayers attempt to use a CRAT and a single premium immediate annuity (SPIA) to permanently avoid recognition of ordinary income and/or capital gain. Taxpayers engaging in these transactions claim that distributions from the trust are not taxable to the beneficiaries as ordinary income or capital gain under section 664(b) because the distributions constitute the trust's unrecovered investment in the SPIA, thus claiming that a significant portion of the distributions is excluded from gross income under section 72(b)(2) of the Code. Taxpayers also claim that the trust qualifies as a CRAT and thus is not subject to tax on the trust's realized ordinary income or capital gain under section 664(c)(1), even though the trust may not meet all of the requirements of section 664(d)(1).

In these transactions, a grantor creates a trust purporting to qualify as a CRAT under section 664. Generally, the grantor funds the trust with property having a FMV in excess of its basis (appreciated property) such as interests in a closely-held business, and/or assets used or produced in a trade or business. The trust then sells the appreciated property and uses some or all of the proceeds from the sale of the contributed property to purchase an annuity. On a Federal income tax return, the beneficiary of the trust treats the annuity amount payable from the trust as if it were, in whole or in part, an annuity payment subject to section 72,[2] instead of as carrying out to the beneficiary amounts in the ordinary

[2] Section 72 governs the tax treatment of payments received as an annuity, and generally causes only the portion of each payment in excess of the investment in the contract (basis) to be included in the recipient's gross income.

income and capital gain tiers of the trust in accordance with section 664(b).

As result of treating section 72 as applying to the amounts received (typically paid by an insurance company) as part of the annuity amount, the beneficiary reports as income only a small portion of the amount the beneficiary received from the SPIA. The beneficiary treats the balance of the annuity amount as an excluded portion representing a return of investment.[3] The beneficiary thus claims that the beneficiary is taxed as if the beneficiary were the owner of the SPIA, rather than the SPIA being an asset owned by the CRAT, which the trustee purchased to fund the annuity amount payable from the trust. Under the beneficiary's theory, until the entire investment in the SPIA has been recovered, the only portion of the annuity amount includable in the beneficiary's income is that portion of the SPIA annuity required to be included in income under section 72. The beneficiary also maintains that the distribution is not subject to section 664(b), which would treat a substantial portion of the annuity amount as gain attributable to the sale of the appreciated property contributed to the CRAT.

The trustee also might take the position that the transfer of the appreciated property to the purported CRAT gives those assets a step-up in basis to FMV as if they had been sold to the trust. The transfer of property to a CRAT, however, does not give those assets a step-up in basis to FMV, as if they had been sold to the trust, giving the trust a cost basis under section 1012 of the Code. Instead, the transfer to the CRAT is a gift for Federal tax purposes. When a grantor transfers appreciated property to a CRAT, the CRAT's basis in the assets is determined under section 1015 of the Code. Under section 1015(a) and (d), property transferred by gift (whether or not in trust) retains its basis in the hands of the donor, increased (but not above FMV) by any gift tax paid on the transfer.

The claimed application of sections 664 and 72 to the transaction is incorrect. Proper application of the rules of sections 664 and 72 to the transaction results in annual ordinary income from the annuity payments from the SPIA being added to the section 664(b)(1) (ordinary income) tier of the CRAT's income each year, and a one-time amount being added to the section 664(b)(2) (capital gains) tier at the time of the sale of the property by the CRAT (assuming the asset is of a kind to produce capital gain). Assuming no other activity in the CRAT, under section 664(b), the beneficiary of the CRAT must treat the annuity amount each year as first consisting of the ordinary income portion of the annuity payments from the SPIA. The balance of the annuity amount must be treated as consisting of any accumulated ordinary income of the CRAT, then accumulated capital gain, and then other income of the CRAT, only reaching non-taxable corpus to the extent these three accounts have been exhausted.

In addition, certain features of the trust may cause the trust to fail to meet all of the requirements of section 664(d)(1). While the trust instrument generally resembles one of the eight sample CRAT forms provided in Rev. Proc. 2003–53, 2003–2 C.B. 230; Rev. Proc. 2003–54, 2003–2 C.B. 236; Rev. Proc, 2003–55, 2003–2 C.B. 242; Rev. Proc. 2003–56, 2003–2 C.B. 249; Rev. Proc. 2003–57, 2003–2 C.B. 257; Rev. Proc. 2003–58, 2003–2 C.B. 262; Rev. Proc. 2003–59, 2003–2 C.B 268; and Rev. Proc. 2003–60, 2003–2 C.B. 274 (Sample CRAT Revenue Procedures), it might have one or more significant modifications. For example, the trust instrument might provide that, in each taxable year of the trust, the trustee must pay to the beneficiary during the annuity period, an annuity amount equal to the greater of (1) an amount which meets the requirements of section 664(d)(1)(A) or (2) the payments received by the trustee from one or more SPIAs purchased by the trustee.

The trust instrument also might provide for a current payment to an organization described in section 170(c) (Charitable Remainderman) in lieu of the payment of the remainder interest described in section 664(d)(1)(C). For example, the trust instrument might state that, in lieu of transferring the remainder amount required pursuant to section 664(d)(1)(C) (Remainder Interest) to the Charitable Remainderman, the trustee, upon the availability of adequate funding, currently may pay to the Charitable Remainderman a cash sum equal to at least 10 percent of the initial FMV of the trust property plus a nominal amount of cash. The trust agreement also might provide that the trustee cannot make a distribution in kind to satisfy this cash distribution. This payment, equal to at least 10 percent of the initial FMV of the trust property, would be the only payment to the Charitable Remainderman. The governing instrument of a CRAT may provide for an amount other than the annuity amount described in § 1.664–2(a)(1) to be paid (or to be paid in the discretion of the trustee) to an organization described in § 170(c) provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of payment. *See* § 1.664–2(a)(4). However, nowhere in section 664(d)(1)(D) does it permit a current payment, determined based on the value of the trust at its funding, to be made in lieu of, and as a substitute for, the required payment of the remainder interest (that is, the entire corpus of the trust at termination of the annuity period) described in section 664(d)(1)(C) to the Charitable Remainderman.

The significant modifications identified in the prior paragraphs deviate from the Sample CRAT Revenue Procedures in ways that prevent the qualification of the trust as a valid CRAT under section 664, regardless of the actual administration of the CRAT. These modifications are made in these transactions in order to effectuate the structure. Specifically, a provision authorizing the payment of an annuity amount in excess of the amount described in section 664(d)(1)(A), and a provision authorizing a current payment in lieu of the payment of the remainder interest described in section 664(d)(1)(C), violate mandatory requirements of a valid CRAT.

VI. Purpose of Proposed Regulations

On March 3, 2022, the Sixth Circuit issued an order in *Mann Construction* v. *United States,* 27 F.4th 1138, 1147 (6th Cir. 2022), holding that Notice 2007–83, 2007–2 C.B. 960, which identified certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies as listed transactions, violated the Administrative Procedure Act (APA), 5 U.S.C. 551–559, because the notice was issued without following the notice-and-comment procedures required by section 553 of the APA. The Sixth Circuit reversed the decision of the district court, which held that Congress had authorized the IRS to identify listed transactions without notice and comment. See *Mann Construction, Inc.* v. *United States,* 539 F.Supp.3d 745, 763 (E.D. Mich. 2021).

Relying on the Sixth Circuit's analysis in *Mann Construction,* three district courts and the Tax Court have concluded that IRS notices identifying listed transactions were improperly issued because they were issued without following the APA's notice and comment procedures. See *Green Rock, LLC* v. *IRS,* 2023 WL 1478444 (N.D. AL.,

[3] The beneficiary also claims that section 72(u) does not apply because the SPIA is an ''immediate annuity'' under section 72(u)(3)(E).

February 2, 2023) (Notice 2017–10); *GBX Associates, LLC,* v. *United States,* 1:22cv401 (N.D. Ohio, Nov. 14, 2022) (same); *Green Valley Investors, LLC, et al.* v. *Commissioner,* 159 T.C. No. 5 (Nov. 9, 2022) (same); see also *CIC Services, LLC* v. *IRS,* 2022 WL 985619 (E.D. Tenn. March 21, 2022), *as modified by* 2022 WL 2078036 (E.D. Tenn. June 2, 2022) (Notice 2016–66, identifying a transaction of interest).

The Treasury Department and the IRS disagree with the Sixth Circuit's decision in *Mann Construction* and the subsequent decisions that have applied that reasoning to find other IRS notices invalid and are continuing to defend the validity of notices identifying transactions as listed transactions in circuits other than the Sixth Circuit. At the same time, however, to avoid any confusion and to ensure consistent enforcement of the tax laws throughout the nation, the Treasury Department and the IRS are issuing these proposed regulations to identify certain charitable remainder trust transactions as listed transactions for purposes of all relevant provisions of the Code and Treasury Regulations.

These proposed regulations propose to identify the charitable remainder trust transactions described in proposed § 1.6011–15(b), and substantially similar transactions, as listed transactions for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112. In addition, they inform taxpayers that participate in these transactions, and persons who act as material advisors with respect to these transactions, that they would need to disclose the transaction in accordance with the final regulations and the regulations issued under sections 6011 and 6111. Material advisors must also maintain lists as required by section 6112.

Explanation of Provisions

I. Charitable Remainder Annuity Trust Transaction

Proposed § 1.6011–15(a) would identify a transaction that is the same as, or substantially similar to, the transaction described in proposed § 1.6011–15(b) as a listed transaction for purposes of § 1.6011–4(b)(2). ''Substantially similar'' is defined in § 1.6011–4(c)(4) to include any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or a similar tax strategy.

A transaction is described in proposed § 1.6011–15(b) if it includes the following elements:

(i) The grantor creates a trust purporting to qualify as a CRAT under section 664;

(ii) The grantor funds the trust with property having a FMV in excess of its basis (contributed property);

(iii) The trustee sells the contributed property;

(iv) The trustee uses some or all of the proceeds from the sale of the contributed property to purchase an annuity; and

(v) On a Federal income tax return, the beneficiary of the trust (Beneficiary) treats the amount payable from the trust as if it were, in whole or in part, an annuity payment subject to section 72, instead of as carrying out to the Beneficiary amounts in the ordinary income and capital gain tiers of the trust in accordance with section 664(b).

II. Participants

Whether a taxpayer has participated in the listed transaction described in proposed § 1.6011–15(b) is determined under § 1.6011–4(c)(3)(i)(A). Participants include any person whose tax return reflects tax consequences or a tax strategy described in proposed § 1.6011–15(b). These tax consequences include those tax consequences described in proposed § 1.6011–15(b) that would affect any gift tax return, whether or not such gift tax return was filed. *See* § 25.6011–4. A taxpayer also has participated in a transaction described in proposed § 1.6011–15(b) if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences, or a tax strategy, described in proposed § 1.6011–15(b).

III. Material Advisors

Material advisors who make a tax statement with respect to transactions identified as listed transactions in proposed § 1.6011–15(b) would have disclosure and list maintenance obligations under sections 6111 and 6112. *See* §§ 301.6111–3 and 301.6112–1. One of the requirements to be a material advisor under section 6111(b)(1) is that the person must directly or indirectly derive gross income in excess of the threshold amount provided in 6111(b)(1)(B) for providing material aid, assistance, or advice with respect to the listed transaction. That threshold in the case of a listed transaction is reduced to $10,000 if substantially all of the tax benefits are provided to natural persons (looking through any partnerships, S corporations, or trusts), or to $25,000 for any other transaction. *See* § 301.6111–3(b)(3)(i)(B). The regulations under section 6111 provide that gross income includes all fees for a tax strategy, for services for advice (whether or not tax advice), and for the implementation of a reportable transaction. *See* § 301.6111–3(b)(2)(ii). However, a fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. *See* § 301.6111–3(b)(3)(ii).

IV. Effect of Participating in Listed Transaction Described in Proposed § 1.6011–15(b)

Participants required to disclose these transactions under § 1.6011–4 who fail to do so will be subject to penalties under section 6707A. Such disclosure also must include any gift tax consequences. *See* § 25.6011–4. Participants required to disclose these transactions under § 1.6011–4 who fail to do so also are 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 are subject to penalties 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) are subject to penalties under section 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the penalty under section 6694 for understatements of a taxpayer's liability by a tax return preparer, the penalty under section 6700 for promoting abusive tax shelters, and the penalty under section 6701 for aiding and abetting understatement of tax liability.

In addition, material advisors have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding § 301.6111–3(b)(4)(i) and (iii), material advisors are required to disclose only if they have made a tax statement on or after [DATE 6 YEARS BEFORE DATE OF PUBLICATION OF FINAL RULE].

Because the IRS will take the position that taxpayers are not entitled to the purported tax benefits of the listed transactions described in the proposed regulations, taxpayers who have filed tax returns taking the position that they were entitled to the purported tax benefits should consider filing amended returns or otherwise ensure that their transactions are disclosed properly.

V. Role of Charitable Remainderman in the Transaction

As stated in section 1 of this Explanation of Provisions, the

transaction described in proposed § 1.6011–15(b) attempts to use a CRAT under section 664 to permanently avoid recognition of ordinary income and/or capital gain on the sale of contributed property having a FMV in excess of its basis. Under the mandatory requirements of section 664(d), a trust does not qualify as a CRAT unless, following the termination of the annuity payments described in section 664(d)(1)(A), the Remainder Interest is to be transferred to or for the use of an organization described in section 170(c).

A. Charitable Remainderman as a Party to a Transaction Under Section 4965

As stated in section III of the Background, section 4965 provides, in part, that, if a transaction is a prohibited tax shelter transaction at the time a tax-exempt entity (which includes an organization described in section 170(c), other than the United States) becomes a party to the transaction, the entity must pay the section 4965 tax for the taxable year and any subsequent taxable year as determined under section 4965(b)(1). Section 4965(e)(1) provides in part that the term ''prohibited tax shelter transaction'' means any listed transaction (within the meaning of section 6707A(c)(2)). A tax-exempt entity that is a party to a prohibited tax shelter transaction generally is subject to various reporting and disclosure obligations. Additionally, an entity manager is subject to the entity manager tax imposed by section 4965(a)(2) if the entity manager approves the tax-exempt entity as a party (or otherwise causes the entity to be a party) to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. Section 53.4965–4(a) provides in part that a tax-exempt entity is a ''party'' to a prohibited tax shelter transaction if it facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status.

The trust used in a transaction identified as a listed transaction in proposed § 1.6011–15(a) would not qualify as a CRAT unless the entire Remainder Interest is required to be transferred to or for the use of a Charitable Remainderman. Thus, the tax-exempt entity that the CRAT designates for the Remainder Interest facilitates the transaction by reason of its tax-exempt status because, absent that status, the CRAT would not satisfy the mandatory requirement of section 664(d)(1)(C). Accordingly, that designated tax-exempt entity would meet the definition of a party to a prohibited tax shelter transaction in § 53.4965–4(a)(1).

However, notwithstanding the general rule in § 53.4965–4(a), § 53.4965–4(b) provides that published guidance may identify, by type, class, or role, which tax-exempt entities will or will not be treated as parties to a prohibited tax shelter transaction. The Treasury Department and the IRS understand that, in a transaction described in proposed § 1.6011–15(b), an organization described in section 170(c) that is designated as the Charitable Remainderman might not become aware of its Remainder Interest in the purported CRAT until it receives a distribution from the trust. In that situation, it may be difficult for the organization described in section 170(c) to determine when section 4965 excise taxes and related reporting requirements apply. For this reason, these proposed regulations would provide that an organization described in section 170(c) that the purported CRAT designates as the recipient of the Remainder Interest will not be treated as a party under section 4965 to the listed transaction described in proposed § 1.6011–15 solely by reason of its status as a Charitable Remainderman.

B. Participation by a Charitable Remainderman

As stated in section II of the Background, a taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in this proposed regulation. *See* § 1.6011–4(c)(3)(i)(A). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance also may identify types or classes of persons that will not be treated as participants in a listed transaction. In general, the Treasury Department and the IRS do not expect that an organization described in section 170(c), whose only role or interest in the transaction described in these proposed regulations is as a Charitable Remainderman, would meet the definition of a participant under § 1.6011–4(c)(3)(i)(A). Nevertheless, to avoid potential uncertainty, the proposed regulations provide that an organization described in section 170(c) that the purported CRAT designates as the recipient of the Remainder Interest is not treated as a participant in the listed transaction described in these proposed regulations solely by reason of its status as a Charitable Remainderman.

C. Charitable Remainderman as a Material Advisor

As stated in section III of the Background, 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 for the material aid, assistance, or advice. *See* section 6111(b)(1)(A). The regulations provide that gross income includes all fees for a tax strategy, for services or advice (whether or not tax advice), and for the implementation of a reportable transaction. However, a fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. *See* § 301.6111–3(b)(3)(ii)).

The Treasury Department and the IRS request comments on whether the Charitable Remainderman ever provides material aid, assistance, or advice with respect to transactions described in proposed § 1.6011–15(b) and the nature of the services being provided. The Treasury Department and the IRS also request comments on what fees the Charitable Remainderman receives, either directly or indirectly, for providing such material aid, assistance or advice.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. 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 July 11, 2024, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to the 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 alternatively may attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to

each topic by May 24, 2024. A period of 10 minutes will be allocated to each person for 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 free of charge at the hearing. If no outline of topics to be discussed at the hearing is received by May 24, 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–108761–22) and the language ''TESTIFY In Person''. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–108761–22.

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–108761–22 and the language ''TESTIFY Telephonically''. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–108761–22.

Individuals who want to attend the public hearing in person without testifying also must send an email to *publichearings@irs.gov* to have their names added to the building access list. The subject line of the email must contain the regulation number REG–108761–22 and the language ''ATTEND in Person''. For example, the subject line may say: Request to ATTEND Hearing In Person REG–108761–22. Requests to attend the public hearing must be received by 5 p.m. ET on July 9, 2024.

Individuals who want to attend the public hearing by telephone without testifying also must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of email must contain the regulation number (REG–108761–22 and the language ''ATTEND Hearing Telephonically''. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–108761–22. Requests to attend the public hearing must be received by 5 p.m. ET on July 9, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing, please contact the Publication and Regulations Section 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) at least July 8, 2024.

Applicability Date

Proposed § 1.6011–15 would identify charitable remainder annuity trust transactions described in proposed § 1.6011–15(b), and transactions that are substantially similar to those transactions, as listed transactions, effective as of the date the final regulations are published in the **Federal Register**.

Special Analyses

I. Paperwork Reduction Act

The estimated number of taxpayers impacted by these proposed regulations is between 50 to 100 per year. No burden on these taxpayers is imposed by these proposed regulations. Instead, 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 the Office of Management and Budget (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 Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 already is contained in the burden associated with the control number for the forms and remains 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.

II. Regulatory Flexibility Act

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (Act) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that ''describe[s] the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). The term ''small entities'' is defined in 5 U.S.C. 601 to mean ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' which are also defined in 5 U.S.C. 601. Small business size standards define whether a business is ''small'' and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). *See* Title 13, Part 121 of the Code of Federal Regulations (titled ''Small Business Size Regulations''). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. *See* Title 13, Part 121.201 of the Code of Federal Regulations for the Small Business Size Standards by NAICS Industry.

Section 605 of the Act provides an exception to the requirement to prepare an initial regulatory flexibility analysis if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the majority of the effect of the proposed regulations falls on trusts. 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.

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.

III. 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.

IV. 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.

V. 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.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is 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 Charles D. Wien, Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and the Treasury Department 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 continues to read in part as follows:

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

* * * * *

Section 1.6011–15 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011 * * *

* * * * *

■ **Par. 2.** Section 1.6011–15 is added to read as follows:

§ 1.6011–15 Charitable Remainder Annuity Trust Listed Transaction.

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

(b) *Charitable remainder annuity trusts.* A transaction is described in this paragraph (b) if:

(1) The grantor creates a trust purporting to qualify as a charitable remainder annuity trust under section 664(d)(1) of the Internal Revenue Code (Code);

(2) The grantor funds the trust with property having a fair market value in excess of its basis (contributed property);

(3) The trustee sells the contributed property;

(4) The trustee uses some or all of the proceeds from the sale of the contributed property to purchase an annuity; and

(5) On a Federal income tax return, the beneficiary of the trust treats the annuity amount payable from the trust as if it were, in whole or in part, an annuity payment subject to section 72 of the Code, instead of as carrying out to the beneficiary amounts in the ordinary income and capital gain tiers of the trust in accordance with section 664(b).

(c) *Participation*—(1) *In general.* A taxpayer has participated in a transaction identified as a listed transaction in paragraph (a) of this section if the taxpayer's tax return reflects tax consequences or a tax strategy described in this section as provided under § 1.6011–4(c)(3)(i)(A). These tax consequences include those tax consequences that would affect any gift tax return, whether or not such gift tax return was filed. *See* § 25.6011–4 of this chapter.

(2) *Treatment of charitable remainderman.* An organization described in section 170(c) of the Code that the purported Charitable Remainder Annuity Trust designates as a recipient of the remainder interest described in section 664(d)(1) is not treated as a participant under § 1.6011–4(c)(3)(i)(A) in the transaction described in this section solely by reason of its status as a recipient of the remainder interest described in section 664(d)(1).

(d) *Treatment of charitable remainderman under section 4965.* A tax-exempt entity (as defined in section 4965 of the Code) that is an organization described in section 170(c) and that the purported Charitable Remainder Annuity Trust designates as a recipient of the remainder interest described in section 664(d)(1) is not treated as a party to the transaction described in this section for purposes of section 4965 solely by reason of its status as a recipient of the remainder interest described in section 664(d)(1).

(e) *Applicability date.* This section's identification of transactions that are the same as, or substantially similar to, the transaction described in paragraph (b) of this section as listed transactions for purposes of § 1.6011–4(b)(2) is effective on [date of publication of final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2024–06156 Filed 3–22–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2024–0177]

RIN 1625–AA08

Special Local Regulation; Red River, Shreveport, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation (SLR) for certain navigable waters of the Red River. This action is necessary to provide for the safety of life on these navigable waters near Shreveport, Louisiana, during high-speed powerboat races from May 24, 2024 through May 26, 2024. This proposed rulemaking would prohibit persons and vessels from being in the regulated unless authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 9, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0177 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MSTC Lindsey Swindle, Waterways Management, U.S. Coast Guard; telephone 571–610–4197, email *Lindsey.M.Swindle@uscg.mil.*

SUPPLEMENTARY INFORMATION: