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# Contents

**Federal Register**

Vol. 83, No. 154

Thursday, August 9, 2018

**Agricultural Marketing Service**
PROPOSED RULES
Development of Standards for Substances to be Used in Organic Production:
National Organic Standards Board; Meeting, 39376

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Forest Service
*See* Rural Utilities Service

**Air Force Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39430–39431

**Centers for Disease Control and Prevention**
NOTICES
Meetings:
Board of Scientific Counselors, National Institute for Occupational Safety and Health, 39440–39441
Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health, 39441

**Centers for Medicare & Medicaid Services**
PROPOSED RULES
Medicare Program:
Revisions to Payment Policies under Physician Fee Schedule and Other Revisions to Part B for CY 2019; Medicare Shared Savings Program Requirements; etc., 39397–39398

**Civil Rights Commission**
NOTICES
Meetings:
Kentucky Advisory Committee, 39409
South Carolina Advisory Committee, 39409

**Coast Guard**
RULES
Drawbridge Operations:
Delaware River, Burlington, NJ and Bristol, PA, 39361
Safety Zones:
Captain of the Port Lake Michigan Zone; Milwaukee Open Water Swim, 39361
Discovery World Fireworks, Milwaukee Harbor, Milwaukee, WI, 39363–39365
Lake Michigan, Whiting, IN, 39361–39363

**Commerce Department**
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Defense Department**
*See* Air Force Department

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Blanket Authorizations to Export Previously Imported Liquefied Natural Gas:
BP Energy Co.; Short-Term Basis, Application, 39431–39432

**Environmental Protection Agency**
RULES
Air Quality Designations:
Florida; 2012 Primary Annual Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard, 39369–39373
Air Quality State Implementation Plans; Approvals and Promulgations:
Maryland; 2011 Base Year Inventory for 2008 8-Hour Ozone National Ambient Air Quality Standard for Baltimore, Maryland Nonattainment Area, 39365–39369
Tolerance Exemptions:
Cerevisane (Cell Walls of Saccharomyces Cerevisiae Strain LAS117), 39373–39375
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee; Interstate Transport for 2012 Fine Particulate Matter National Ambient Air Quality Standards, 39387–39397
NOTICES
Registration Reviews:
Several Pesticides; Draft Human Health and/or Ecological Risk Assessments, 39437–39438
Several Pesticides; Interim Decisions, 39436–39437

**Export-Import Bank**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39439

**Federal Aviation Administration**
RULES
Airworthiness Directives:
Airbus SAS Airplanes, 39326–39331
PROPOSED RULES
Airworthiness Directives:
Airbus Helicopters, 39382–39384
Airbus SAS Airplanes, 39377–39380
Rolls-Royce plc Turbofan Engines, 39380–39382
Amendment of Class E Airspace; Establishment of Class E Airspace:
Augusta GA; Waynesboro, GA, 39384–39385
Knoxville, TN; Madisonville, TN, 39386–39387
NOTICES
Land Waivers:
Hanover County Municipal Airport, Hanover, VA, 39494

**Federal Emergency Management Agency**
NOTICES
Flood Hazard Determinations; Proposals, 39455–39457

**Federal Energy Regulatory Commission**
NOTICES
Applications:
Great Lakes Hydro America, 39434
Combined Filings, 39432–39433
Environmental Assessments; Availability, etc.:
Columbia Gas Transmission, LLC: Line KA1 North Launcher/Receiver Project, 39435–39436

Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Persimmon Creek Wind Farm 1, LLC, 39433–39434

**Federal Housing Finance Agency**
**RULES**
Federal Housing Finance Board Regulations:
Repeal and Technical Amendments, 39323–39326

**Federal Housing Finance Board**
**RULES**
Federal Housing Finance Board Regulations:
Repeal and Technical Amendments, 39323–39326

**Federal Motor Carrier Safety Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Commercial Driver Licensing and Test Standards, 39496–39498
Commercial Driver's License Standards; Exemption Applications:
CRST Expedited, 39495–39496
Hours of Service of Drivers; Exemption Applications:
HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc.; and Moran Environmental Recovery, LLC, 39498–39500
National Hazardous Materials Route Registry, 39500–39504

**Federal Railroad Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39505

**Federal Reserve System**
**NOTICES**
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 39439–39440
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 39439
Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities, 39440

**Federal Transit Administration**
**NOTICES**
Program Guidance for Metropolitan Planning Program and State Planning and Research Program Grants, 39505–39507

**Food and Drug Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Disclosures in Professional and Consumer Prescription Drug Promotion, 39441–39448
Generic Clearance for Collection of Quantitative Data on Tobacco Products and Communications, 39449–39450
Voluntary Labeling Indicating Whether Foods Have or Have Not Been Derived from Genetically Engineered Plants, 39450–39453
Drug Products Not Withdrawn from Sale for Reasons of Safety or Effectiveness:
PROLIXIN (Fluphenazine Hydrochloride) Tablets, 1 Milligram, 2.5 Milligrams, 5 Milligrams, and 10 Milligrams, 39453–39454
Guidance:
Dissolution Testing and Acceptance Criteria for Immediate-Release Solid Oral Dosage Form Drug Products Containing High Solubility Drug Substances, 39448–39449

**Forest Service**
**NOTICES**
Environmental Impact Statements; Availability, etc.:
Tongass National Forest, Petersburg Ranger District, Alaska; Central Tongass Project, 39402–39405

**Geological Survey**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39459–39460

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Centers for Medicare & Medicaid Services
*See* Food and Drug Administration
*See* National Institutes of Health

**Homeland Security Department**
*See* Coast Guard
*See* Federal Emergency Management Agency
*See* U.S. Customs and Border Protection
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Homeland Security Acquisition Regulation: Solicitation of Proposal Information for Award of Public Contracts, 39457–39459

**Interior Department**
*See* Geological Survey

**Internal Revenue Service**
**RULES**
Partnership Representative under Centralized Partnership Audit Regime and Election to Apply Centralized Partnership Audit Regime, 39331–39351
**PROPOSED RULES**
Guidance Regarding Transition Tax under Section 965 and Related Provisions, 39514–39575
**NOTICES**
Meetings:
Taxpayer Advocacy Panel Joint Committee, 39510
Taxpayer Advocacy Panel Notices and Correspondence Project Committee, 39511
Taxpayer Advocacy Panel Special Projects Committee, 39511
Taxpayer Advocacy Panel Tax Forms and Publications Project Committee, 39510
Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee, 39511
Taxpayer Advocacy Panel Taxpayer Communications Project Committee, 39510–39511
Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee, 39510

**International Trade Administration**
**NOTICES**
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Frozen Warmwater Shrimp from Socialist Republic of Vietnam, 39411–39412
Certain Pasta from Italy, 39418–39420

Certain Steel Nails from Malaysia, 39422–39424
Certain Uncoated Groundwood Paper from Canada, 39414–39418
Certain Uncoated Paper from Indonesia, 39410–39411
Monosodium Glutamate from the People's Republic of China, 39420–39422
Determinations of Sales at Less Than Fair Value:
Certain Uncoated Groundwood Paper from Canada, 39412–39414

**International Trade Commission**
**NOTICES**
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Jump Rope Systems, 39460–39461
Certain LED Lighting Devices, LED Power Supplies, and Components Thereof, 39462
Low Melt Polyester Staple Fiber from Korea and Taiwan, 39461–39462

**Judicial Conference of the United States**
**NOTICES**
Meetings:
Advisory Committee on Rules of Appellate Procedure, 39462–39463
Advisory Committee on Rules of Civil Procedure, 39462
Advisory Committees on Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and Federal Rules of Evidence, 39463

**Justice Department**
**NOTICES**
Proposed Consent Decrees under the Clean Air Act, 39463–39464

**Labor Department**
*See* Occupational Safety and Health Administration

**National Credit Union Administration**
**NOTICES**
Suspension and Debarment Procedures, 39464–39469

**National Institutes of Health**
**NOTICES**
Government-Owned Inventions; Availability for Licensing, 39454

**National Oceanic and Atmospheric Administration**
**PROPOSED RULES**
Fisheries of the Northeastern United States:
Summer Flounder, Scup, and Black Sea Bass Fisheries; Commercial Accountability Measure Framework Adjustment 13, 39398–39401
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39424, 39430
Environmental Assessments; Availability, etc.:
National Data Buoy Center, 39429–39430
Requests for Information:
Expressions of Interest in Conducting Collaborative Research and Development on Innovative Approaches for Exploiting Environmental Data, 39428–39429
Takes of Marine Mammals:
Gustavus Ferry Terminal Improvements Project, 39424–39428

**Nuclear Regulatory Commission**
**NOTICES**
Dry Storage and Transportation of High Burnup Spent Nuclear Fuel, 39475–39476
Exemptions and Combined License Amendments:
Southern Nuclear Operating Co., Inc: Vogtle Electric Generating Plant, Units 3 and 4: Tier 1 and Tier 2 Editorial and Consistency Changes, 39474–39475
Southern Nuclear Operating Co., Inc: Vogtle Electric Generating Plant, Units 3 and 4: Ventilation System Changes, 39472–39474
License Amendment Applications:
Homestake Mining Co. of California; Grants Reclamation Project; Groundwater Monitoring Plan, 39476–39479
Homestake Mining Co. of California; Grants Reclamation Project; Zeolite Water Treatment Systems, 39470–39472
Meetings:
Advisory Committee on Reactor Safeguards Subcommittee on Thermal-Hydraulic Phenomena, 39469–39470

**Occupational Safety and Health Administration**
**RULES**
Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry, 39351–39360

**Pension Benefit Guaranty Corporation**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Locating and Paying Participants, 39479

**Pipeline and Hazardous Materials Safety Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
OPID Assignment Request and National Registry Notification, 39508–39509
Pipeline Safety:
Underground Natural Gas Storage Facility User Fee, 39507–39508

**Postal Regulatory Commission**
**NOTICES**
New Postal Products, 39479–39480

**Postal Service**
**NOTICES**
Product Changes:
Priority Mail Negotiated Service Agreement, 39480

**Presidential Documents**
**ADMINISTRATIVE ORDERS**
Colombia; Continuation of Drug Interdiction Assistance (Presidential Determination No. 2018–10 of July 20, 2018), 39577–39579

**Rural Utilities Service**
**NOTICES**
Technical Assistance and Training Grant Program, 39405–39408

**Securities and Exchange Commission**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 39480–39481, 39483–39486

Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 39486–39488
Nasdaq BX, Inc., 39484–39485
Nasdaq Stock Market, LLC, 39490–39492
National Securities Clearing Corp., 39481–39483
New York Stock Exchange, LLC, 39488–39490

**Small Business Administration**
**NOTICES**
Disaster Declarations:
Iowa, 39492

**State Department**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Affidavit of Physical Presence or Residence, Parentage and Support, 39493–39494
Meetings:
Defense Trade Advisory Group, 39492–39493
Industry Advisory Group, 39493

**Surface Transportation Board**
**NOTICES**
Leases and Operation Exemptions:
Foxville and Northern Railroad Co., LLC; Badin Business Park, LLC, 39494

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Motor Carrier Safety Administration
*See* Federal Railroad Administration
*See* Federal Transit Administration
*See* Pipeline and Hazardous Materials Safety Administration

**Treasury Department**
*See* Internal Revenue Service

**U.S. Customs and Border Protection**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Biometric Identity, 39454–39455

---

**Separate Parts In This Issue**

**Part II**
Treasury Department, Internal Revenue Service, 39514–39575

**Part III**
Presidential Documents, 39577–39579

---

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**3 CFR**

**Administrative Orders:**

Presidential Determinations:

No. 2018–10 of July 20, 2018 ..... 39579

**7 CFR**

**Proposed Rules:**

205 ..... 39376

**12 CFR**

900 ..... 39323
906 ..... 39323
956 ..... 39323
957 ..... 39323
958 ..... 39323
959 ..... 39323
960 ..... 39323
961 ..... 39323
962 ..... 39323
963 ..... 39323
964 ..... 39323
965 ..... 39323
966 ..... 39323
967 ..... 39323
968 ..... 39323
969 ..... 39323
970 ..... 39323
971 ..... 39323
972 ..... 39323
973 ..... 39323
974 ..... 39323
975 ..... 39323
976 ..... 39323
977 ..... 39323
978 ..... 39323
979 ..... 39323
980 ..... 39323
981 ..... 39323
982 ..... 39323
983 ..... 39323
984 ..... 39323
985 ..... 39323
986 ..... 39323
987 ..... 39323
988 ..... 39323
989 ..... 39323
990 ..... 39323
991 ..... 39323
992 ..... 39323
993 ..... 39323
994 ..... 39323
995 ..... 39323
996 ..... 39323
997 ..... 39323
998 ..... 39323
999 ..... 39323
1200 ..... 39323
1206 ..... 39323
1223 ..... 39323
1261 ..... 39323

**14 CFR**

39 ..... 39326

**Proposed Rules:**

39 (3 documents) ..... 39377, 39380, 39382
71 (2 documents) ..... 39384, 39386

**26 CFR**

301 ..... 39331

**Proposed Rules:**

1 ..... 39514

**29 CFR**

1910 ..... 39351

**33 CFR**

117 ..... 39361
165 (3 documents) ..... 39361, 39363

**40 CFR**

52 ..... 39365
81 ..... 39369
180 ..... 39373

**Proposed Rules:**

52 ..... 39387

**42 CFR**

**Proposed Rules:**

405 ..... 39397
410 ..... 39397
411 ..... 39397
414 ..... 39397
415 ..... 39397
495 ..... 39397

**50 CFR**

**Proposed Rules:**

648 ..... 39398

# Rules and Regulations

Federal Register

Vol. 83, No. 154

Thursday, August 9, 2018

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

## FEDERAL HOUSING FINANCE BOARD

## 12 CFR Parts 900, 906, and 956 Through 999

## FEDERAL HOUSING FINANCE AGENCY

## 12 CFR Parts 1200, 1206, 1223, and 1261

**RIN 2590–AA91**

## Repeal of Federal Housing Finance Board Regulations; Technical Amendments to FHFA Regulations

**AGENCY:** Federal Housing Finance Agency; Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is repealing two parts of the Federal Housing Finance Board (Finance Board) regulations, which define terms used in Finance Board regulations, and which describe the process by which the Finance Board conducted its monthly interest rate survey (MIRS). The repealed definitions are either obsolete or duplicate definitions that FHFA has previously adopted. The regulation relating to the MIRS has become outdated because it does not accurately describe the manner in which FHFA currently conducts the survey. Although FHFA intends to continue to conduct the MIRS in the same manner as it is doing presently, there is no need to carry over this provision into its own regulations. This final rule also repeals a number of subchapters of the Finance Board regulations that it had previously reserved, but which no longer serve any purpose because they include no regulatory text, corrects inaccurate cross-references in regulations described in this rulemaking, and amends a table to update information relating to information collections under the Paperwork Reduction Act.

**DATES:** This rule is effective on September 10, 2018.

**FOR FURTHER INFORMATION CONTACT:** Vickie R. Olafson, Assistant General Counsel, *Vickie.Olafson@FHFA.gov,* (202) 649–3025 (this is not a toll-free number), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Analysis

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA) [1] created FHFA as a new independent agency of the Federal Government, and transferred to FHFA the supervisory and oversight responsibilities of the Finance Board over the Federal Home Loan Banks (Banks), the oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the Enterprises), and certain functions of the Department of Housing and Urban Development.[2] Under section 1313(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), FHFA is responsible for ensuring that the Banks and the Enterprises operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities.[3] The Banks and the Enterprises remain subject to, and continue to operate under, regulations promulgated by the Finance Board and by OFHEO and HUD, respectively, until such regulations are superseded by regulations issued by FHFA.[4] The Finance Board regulations that are the subject of this rulemaking have remained in effect pursuant to that authority.

On April 3, 2018, FHFA published a notice of proposed rulemaking to repeal certain outdated Finance Board regulations.[5] FHFA proposed to repeal definitions under the Finance Board regulations that are obsolete or that duplicate FHFA definitions, and to repeal an outdated Finance Board regulation that describes the process the Finance Board used to conduct the MIRS. FHFA also proposed to repeal subchapters of the Finance Board regulations that were reserved and no longer serve any regulatory purpose. The comment period ended on May 18, 2018. FHFA received no comments in response to any part of the proposed rulemaking, and thus is finalizing the amendments to the Finance Board regulations as proposed.

#### *A. Definitions—Finance Board Part 900*

FHFA proposed repealing the Finance Board definitions located in Subchapter A, which consists of part 900 of the Finance Board regulations, and includes definitions of forty-two terms that had been used throughout the Finance Board regulations. In 2013 FHFA carried over into its own regulations (at part 1201) most of the Finance Board definitions, but did not repeal the Finance Board definitions at that time because a number of substantive Finance Board regulations that used those terms remained in effect.[6] FHFA has now proposed repealing all of the definitions within part 900 of the Finance Board regulations because, since 2013, FHFA has relocated or repealed all of the substantive Finance Board regulations, other than those relating to Bank capital requirements, which are the subject of a separate rulemaking.[7] The final rule is identical to the proposed rule on this topic.

[1] HERA, Public Law 110–289, 122 Stat. 2654.

[2] *See id.* at section 1101, 122 Stat. 2661–62 (codified at 12 U.S.C. 4511, 4511 note, and 4513).

[3] 12 U.S.C. 4513(a).

[4] 12 U.S.C. 4511 note.

[5] Repeal of Federal Housing Finance Board Regulations, 83 FR 14205 (Apr. 3, 2018).

[6] *See* Relocation of Regulations, 78 FR 2319 (Jan. 11, 2013).

[7] *See* Federal Home Loan Bank Capital Requirements, 82 FR 30776 (proposed July 3, 2017). As noted in the proposed rule, certain of those defined terms, such as ''capital plan,'' ''excess stock,'' and ''advance,'' are used within the Finance Board capital regulations at parts 930 and 932, which likely will remain in effect during an extended transition period to the new FHFA Bank capital regulations. 83 FR 14205, 14206. Each of those terms is well understood by the Banks and has been carried over into the FHFA definitions at part 1201 without substantive change, and to the extent any interpretive questions may arise with respect to parts 930 and 932 after the definitions in part 900 are repealed, the Banks may look to the identical definitions in part 1201 of the FHFA regulations to address those questions. *Id.*

*B. Finance Board Part 906*

FHFA proposed repealing subchapter B, consisting of part 906 of the Finance Board Regulations that contains reserved subparts A and C, and subpart B, § 906.5. Section 906.5 describes the manner in which the Finance Board conducted the ''Monthly Survey of Rates and Terms on Conventional One-Family Non-farm Mortgage Loans,'' commonly referred to as the ''Monthly Interest Rate Survey'' or ''MIRS.'' The MIRS is a monthly survey of mortgage lenders that solicits information on the terms and conditions on all conventional, single-family, fully amortizing, purchase-money mortgage loans closed during the last five working days of the preceding month. It was originally conducted by the Federal Home Loan Bank Board (FHLBB), and was continued by the Finance Board, in accordance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the legislation that abolished the FHLBB and established the Finance Board as its successor. FHFA also has continued to conduct the survey and publish the data tables monthly, as successor to the Finance Board.

Historically, two housing finance benchmarks have been based on data obtained through the MIRS: (1) The ''national average one-family house price,'' which, between 1980 and 2008, Fannie Mae and Freddie Mac were statutorily required to use in making annual adjustments to the conforming loan limit; [8] and (2) the Adjustable Rate Mortgage (ARM) Index, which at one time was widely used by lenders in determining the appropriate periodic interest rate adjustment on their ARM loans.

Adjustments in the conforming loan limits for Fannie Mae and Freddie Mac are no longer based on data collected through the MIRS. Some lenders, however, may still use FHFA's ARM Index, which is derived from MIRS data, as one factor in pricing mortgage loans that they originate. In addition, businesses, trade associations, and government agencies at both the federal and state level rely upon the MIRS data for various business and regulatory purposes.

FHFA intends to continue conducting the MIRS and publishing the data results on its website monthly. Because the current MIRS regulation includes an outdated description of the manner in which the survey is conducted, however, and is not necessary in order to implement the statutory mandate that FHFA conduct the survey, FHFA has determined that the regulation is unnecessary.[9] Given the absence of any comments on the proposed rule, the final rule is also identical to the proposed rule on this topic.

*C. Finance Board Parts 956–999 [Reserved] and Subchapters F–M [Reserved]*

The proposal also would have repealed subchapters F–M, consisting of parts 956–999 of title 12 of the Code of Federal Regulations (CFR), which are Finance Board provisions that are designated as ''[r]eserved.'' These reserved parts are currently the only items under subchapters F–M of chapter IX of title 12, and because they contain no substantive provisions there is nothing to revise and relocate to the FHFA regulations. Consequently, FHFA has determined that unless it affirmatively removes the reference to those parts as being reserved and removes subchapters F–M, those references and empty subchapters F–M would remain in the CFR after FHFA has removed or relocated all of the other substantive Finance Board regulations. Accordingly, in the interest of ensuring that all Finance Board regulations that will not be carried forward into the FHFA regulations are removed from the CFR, the final rule adopts the proposed provision to repeal without change.

*D. Other Amendments*

FHFA is also using this final rule as a vehicle to address six other matters, each of which is technical in nature, that FHFA had not included in the proposed rule.

The Paperwork Reduction Act of 1995 (PRA) [10] and the implementing regulations of the Office of Management and Budget (OMB) [11] require FHFA to display a currently valid control number for each collection of information the Agency conducts or sponsors. To satisfy this requirement, § 1200.4(b) of FHFA's regulations includes a table identifying each section of the regulations that contains an information collection requirement and showing, for each of those collections, the control number assigned by OMB and the expiration date of that control number. FHFA is using this final rule as a means to update the information contained in that table to reflect recent OMB actions and approvals.

Separately, § 1261.9(c) of FHFA's Federal Home Loan Bank directorship regulations includes an inaccurate cross-reference to a provision within FHFA's minority and women inclusion regulations. The regulation currently refers to 12 CFR 1207.21(b)(5), which FHFA relocated in 2017 to 12 CFR 1223.21(b)(7).[12] The cross-referenced provision requires the regulated entities to have policies to encourage the consideration of diversity when nominating or soliciting nominations for positions on their boards of directors. FHFA is also using this final rule as a means to correct the cross reference within 12 CFR 1261.9(c).

This final rule also corrects inaccurate cross-references that had not been updated in four other regulations, as follows. First, the reference to ''12 U.S.C. 3645'' in § 1206.3(a)(3) is replaced with ''12 U.S.C. 4635.'' Second, the reference to ''§ 1223.21(b)(6)'' in § 1223.3(b) is replaced with ''§ 1223.21(b)(9).'' Third, the reference to ''§ 1207.3(b)'' in § 1223.21(b)(9) is replaced with ''§ 1223.3(b).'' Fourth, the reference to ''§§ 1207.20 and 1207.21'' in § 1223.23(b)(20) is replaced with ''§§ 1223.20 and 1223.21.''

The Administrative Procedure Act (APA) provides that an agency may amend its regulations without going through a notice and comment rulemaking if it finds good cause that it would be ''impracticable, unnecessary, or contrary to the public interest.'' [13] Each of the six amendments described above is technical in nature and does not present any issues on which public comment would be necessary. Moreover, it is consistent with the public interest for FHFA to correct inaccurate citations within its regulations and to ensure that it periodically updates the information pertaining to OMB control numbers and the expiration dates for its collections of information. Accordingly, FHFA finds that there is good cause for amending these two provisions without an

[8] The Housing and Community Development Act of 1980 tied the Fannie Mae and Freddie Mac conforming loan limits to MIRS. *See* Public Law 96–399, Title III, section 313(a), (b), 94 Stat. 1644–45 (Oct. 8, 1980).

[9] *See* Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, Title IV, section 402(e), 103 Stat. 359–360 (Aug. 9, 1989), codified at 12 U.S.C. 1437 note (regarding the continuation of the ARM Index).

[10] 44 U.S.C. 3501 *et seq.*

[11] 5 CFR part 1320.

[12] The relocation and redesignation occurred in two phases. In March 2017, FHFA redesignated the Minority and Women Inclusion (MWI) regulations that apply to the regulated entities from 12 CFR part 1207 to 12 CFR part 1223, as a result of which § 1207.21(b)(5) became § 1223.21(b)(5). *See* Minority and Women Outreach Program, 82 FR 14992, 14993 (Mar. 24, 2017). In July 2017, FHFA again amended the MWI regulations that apply to the regulated entities by, among other things, redesignating § 1223.21(b)(5) as § 1223.21(b)(7). *See* 82 FR 34388, 34395–96 (July 25, 2017).

[13] 5 U.S.C. 553(b)(B).

opportunity for prior notice and comment.

**II. Considerations of Differences Between the Banks and the Enterprises**

Section 1313(f) of the Safety and Soundness Act requires the FHFA Director, when promulgating regulations ''of general applicability and future effect'' relating to the Banks, to consider the differences between the Banks and the Enterprises as they may relate to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability.[14] As was stated in the proposed rule, FHFA has determined that no such analysis is required in this case because the final rule would not impose any new obligations on the Bank or have any future effect on their rights and responsibilities.

**III. Paperwork Reduction Act**

The PRA requires that FHFA consider the impact of paperwork and other information collection burdens imposed on the public.[15] Under the PRA and OMB's implementing regulations, an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid control number assigned by OMB.[16] The MIRS addressed by 12 CFR 906.5 is a collection of information that OMB has approved under control number 2590–0004, which is due to expire on September 30, 2020.

Although the final rule removes the descriptive provision regarding the MIRS that now appears at 12 CFR 906.5, that removal does not change any aspect of the information collection; that is, FHFA will continue to conduct the survey in accordance with the terms of the existing PRA clearance. Therefore, FHFA has not submitted to OMB a request to approve a revision to control number 2590–0004.

**IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a final regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include a regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of this rulemaking and certifies that it will not have a significant economic impact on a substantial number of small entities because the amendments are entirely technical in nature. Even if the final rule were to have an economic impact, it would apply only to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

**V. Congressional Review Act**

FHFA has determined that this regulatory action does not qualify as either a ''rule'' or a ''major rule'' under the Congressional Review Act. *See* 5 U.S.C. 804(2), (3).

**List of Subjects**

*12 CFR Part 900*

Federal home loan banks, Office of finance, Regulated entity.

*12 CFR Part 906*

Conventional one-family non-farm mortgage loans, Government contracts, Minority businesses, Monthly interest rate survey, Mortgages, Reporting and recordkeeping requirements.

*12 CFR Part 1200*

Organization and functions (Government agencies), Reporting and recordkeeping requirements, Seals and insignia.

*12 CFR Part 1206*

Federal home loan banks, Reporting and recordkeeping requirements.

*12 CFR Part 1223*

Civil rights, Equal employment opportunity, Government contracts, Minority businesses.

*12 CFR Part 1261*

Banking, Banks, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

**Authority and Issuance**

Accordingly, for reasons stated in the preamble and under the authority of 12 U.S.C. 4511, 4512, 4513, and 4526, FHFA amends subchapters A, B, and F–M of chapter IX and subchapters A and D of chapter XII of the Code of Federal Regulations as follows:

**CHAPTER IX—FEDERAL HOUSING FINANCE BOARD**

**SUBCHAPTER A—[REMOVED AND RESERVED]**

■ 1. Remove and reserve subchapter A, consisting of part 900.

**SUBCHAPTER B—[REMOVED AND RESERVED]**

■ 2. Remove and reserve subchapter B, consisting of part 906.

**SUBCHAPTERS F–M—[REMOVED]**

■ 3. Remove reserved subchapters F–M, consisting of reserved parts 956 through 999.

**CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY**

**SUBCHAPTER A—ORGANIZATION AND FUNCTIONS**

## PART 1200—ORGANIZATION AND FUNCTIONS

■ 4. The authority citation for part 1200 continues to read as follows:

**Authority:** 5 U.S.C. 552, 12 U.S.C. 4512, 12 U.S.C. 4526, 44 U.S.C. 3506.

■ 5. In § 1200.4, revise the table in paragraph (b) to read as follows:

**§ 1200.4 OMB control numbers assigned under the Paperwork Reduction Act.**

* * * * *

(b) * * *

| 12 CFR part or section where identified and described | OMB control No. | Expiration date |
|---|---|---|
| 1222.22 | 2590–0013 | 07/31/2018 |
| 1222.23 | 2590–0013 | 07/31/2018 |
| 1222.24 | 2590–0013 | 07/31/2018 |
| 1222.25 | 2590–0013 | 07/31/2018 |
| 1222.26 | 2590–0013 | 07/31/2018 |
| 1223.23 | 2590–0014 | 07/31/2018 |
| 1261.7 | 2590–0006 | 02/28/2021 |

[14] 12 U.S.C. 4513(f).

[15] *See* 44 U.S.C. 3507(a), (d).

[16] *See* 44 U.S.C. 3512(a); 5 CFR 1320.8(b)(3)(vi).

| 12 CFR part or section where identified and described | OMB control No. | Expiration date |
|---|---|---|
| 1261.12 | 2590–0006 | 02/28/2021 |
| 1261.14 | 2590–0006 | 02/28/2021 |
| 1263.2 | 2590–0003 | 03/31/2020 |
| 1263.4 | 2590–0003 | 03/31/2020 |
| 1263.5 | 2590–0003 | 03/31/2020 |
| 1263.6 | 2590–0003 | 03/31/2020 |
| 1263.7 | 2590–0003 | 03/31/2020 |
| 1263.8 | 2590–0003 | 03/31/2020 |
| 1263.9 | 2590–0003 | 03/31/2020 |
| 1263.11 | 2590–0003 | 03/31/2020 |
| 1263.12 | 2590–0003 | 03/31/2020 |
| 1263.13 | 2590–0003 | 03/31/2020 |
| 1263.14 | 2590–0003 | 03/31/2020 |
| 1263.15 | 2590–0003 | 03/31/2020 |
| 1263.16 | 2590–0003 | 03/31/2020 |
| 1263.17 | 2590–0003 | 03/31/2020 |
| 1263.18 | 2590–0003 | 03/31/2020 |
| 1263.19 | 2590–0003 | 03/31/2020 |
| 1263.24 | 2590–0003 | 03/31/2020 |
| 1263.26 | 2590–0003 | 03/31/2020 |
| 1263.31 | 2590–0003 | 03/31/2020 |
| 1264.4 | 2590–0001 | 12/31/2018 |
| 1264.5 | 2590–0001 | 12/31/2018 |
| 1264.6 | 2590–0001 | 12/31/2018 |
| 1266.17 | 2590–0001 | 12/31/2018 |
| 1268.7 | 2590–0008 | 02/29/2016 |
| 1277.22 | 2590–0002 | 04/30/2020 |
| 1277.28 | 2590–0002 | 04/30/2020 |
| 1290.2 | 2590–0005 | 03/31/2020 |
| 1290.3 | 2590–0005 | 03/31/2020 |
| 1290.4 | 2590–0005 | 03/31/2020 |
| 1290.5 | 2590–0005 | 03/31/2020 |
| 1291.5 | 2590–0007 | 03/31/2020 |
| 1291.6 | 2590–0007 | 03/31/2020 |
| 1291.7 | 2590–0007 | 03/31/2020 |
| 1291.8 | 2590–0007 | 03/31/2020 |
| 1291.9 | 2590–0007 | 03/31/2020 |

## PART 1206—ASSESSMENTS

■ 6. The authority citation for part 1206 continues to read as follows:

**Authority:** 12 U.S.C. 4516.

### § 1206.3 [Amended]

■ 7. Amend § 1206.3(a)(3) by removing the reference ''12 U.S.C. 3645'' and adding in its place the reference ''12 U.S.C. 4635''.

## SUBCHAPTER B—ENTITY REGULATIONS

## PART 1223—MINORITY AND WOMEN INCLUSION

■ 8. The authority citation for part 1223 continues to read as follows:

**Authority:** 12 U.S.C. 4520 and 4526; 12 U.S.C. 1833e; E.O. 11478.

### § 1223.3 [Amended]

■ 9. Amend § 1223.3(b) by removing the reference ''§ 1223.21(b)(6)'' and adding in its place the reference ''§ 1223.21(b)(9)''.

### § 1223.21 [Amended]

■ 10. Amend § 1223.21(b)(9) by removing the reference ''§ 1207.3(b)'' and adding in its place the reference ''§ 1223.3(b)''.

### § 1223.23 [Amended]

■ 11. Amend § 1223.23(b)(20) by removing the reference ''§§ 1207.20 and 1207.21'' and adding in its place the reference ''§§ 1223.20 and 1223.21''.

## SUBCHAPTER D—FEDERAL HOME LOAN BANKS

## PART 1261—FEDERAL HOME LOAN BANK DIRECTORS

■ 12. The authority citation for part 1261 continues to read as follows:

**Authority:** 12 U.S.C. 1426, 1427, 1432, 4511 and 4526.

### § 1261.9 [Amended]

■ 13. Amend § 1261.9(c) introductory text by removing the reference ''§ 1207.21(b)(5)'' and adding in its place the reference ''§ 1223.21(b)(7)''.

Dated: August 2, 2018.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2018–16972 Filed 8–8–18; 8:45 am]

BILLING CODE 8070–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2018–0165; Product Identifier 2017–NM–122–AD; Amendment 39–19342; AD 2018–16–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Airbus SAS Model A318–111 and –112 airplanes, Model A319–111, –112, –113, –114, and –115 airplanes, Model A320–211, –212, –214, and –216 airplanes, and Model A321–111, –112, –211, –212, and –213 airplanes. This AD was prompted by a report of a production quality deficiency on the inner retainer installed on link assemblies of the aft engine mount, which could result in

failure of the retainer. This AD requires modifying and re-identifying the aft engine mount assemblies. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective September 13, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 13, 2018.

**ADDRESSES:** For Airbus SAS service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; internet *http://www.airbus.com.*

For Goodrich Aerospace service information identified in this final rule, contact Goodrich Corporation, Aerostructures, 850 Lagoon Drive, Chula Vista, CA 91910–2098; phone: 619–691–2719; email: *jan.lewis@goodrich.com*; internet: *http://www.goodrich.com/TechPubs.*

You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0165.

## Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0165; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A318–111 and –112 airplanes, Model A319–111, –112, –113, –114, and –115 airplanes, Model A320–211, –212, –214, and –216 airplanes, and Model A321–111, –112, –211, –212, and –213 airplanes. The NPRM published in the **Federal Register** on March 9, 2018 (83 FR 10411). The NPRM was prompted by a report of a production quality deficiency on the inner retainer installed on link assemblies of the aft engine mount, which could result in failure of the retainer. The NPRM proposed to require modifying and re-identifying the aft engine mount assemblies.

We are issuing this AD to address non-conforming retainers of the aft engine mount. This condition could result in loss of the locking feature of the nuts of the inner and outer pins; loss of the pins will result in the aft mount engine link no longer being secured to the aft engine mount, possibly resulting in damage to the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0251, dated December 15, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318–111 and –112 airplanes, Model A319–111, –112, –113, –114, and –115 airplanes, Model A320–211, –212, –214, and –216 airplanes, and Model A321–111, –112, –211, –212, and –213 airplanes. The MCAI states:

> During in-service inspections, several aft engine mount inner retainers, fitted on aeroplanes equipped with CFM56–5A/5B engines, were found broken. Investigation identified that the main cause of crack initiation was the vibration dynamic effect that affects the retainers, and that the ''dull'' surface finish pitting is an aggravating factor when compared with the ''bright'' surface finishing.
>
> This condition, if not detected and corrected, could lead to in-flight loss of an aft engine mount link, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.
>
> To address this potential unsafe condition, Airbus issued Alert Operators Transmission (AOT) A71N001–12 (later revised) and EASA issued AD 2013–0050 [which corresponds to FAA AD 2014–14–06, Amendment 39–17901 (79 FR 42655, July 23, 2014)], later superseded by EASA AD 2015–0021 [which corresponds to FAA AD 2016–14–09, Amendment 39–18590 (81 FR 44989, July 12, 2016) (''AD 2016–14–09'')], requiring repetitive detailed inspections (DET) of all aft engine mount inner retainers and, depending on findings, their replacement.
>
> After EASA AD 2015–0021 was issued, a production quality deficiency was identified by Airbus and Goodrich Aerostructures, the engine mount retainer manufacturer, on the inner retainer, Part Number (P/N) 238–0252–505, installed in the three link assemblies of the engine mount fitted on CFM56–5A/5B engines. Airbus issued AOT A71N011–15 and Service Bulletin (SB) A320–71–1070, providing a list of affected parts and applicable corrective actions.
>
> Consequently, EASA issued AD 2016–0010 (later revised), retaining the requirements of EASA AD 2015–0021, which was superseded, and in addition requiring the identification and replacement of all non-conforming aft engine mount inner retainers [EASA AD 2016–0010 R1 corresponds to FAA AD 2017–04–10, Amendment 39–18805 (82 FR 11791, February 27, 2017) (''AD 2017–04–10'')].
>
> After that [EASA] AD was issued, a new engine mount retainer was developed by Goodrich Aerostructures to improve the retainer efficiency. For retrofit purposes, Goodrich Aerostructures issued SB RA32071–164, and Airbus issued SB A320–71–1071, providing instructions to modify and re-identify the engine mount assemblies as instructed in the Goodrich Aerostructures SB. Subsequently, it was observed that, on aeroplanes equipped with certain engines fitted with a Turbine Rear Frame (TRF) with 4 lugs configuration, the installation of the new engine mount retainers can lead to interference, and Goodrich Aerostructures revised SB RA32071–164, providing instructions not to install the new engine retainers on affected engines. Airbus SB A320–71–1071 is expected to be revised accordingly. For engines fitted with a TRF with 4 lugs, a new installation (potentially requiring different engine mount retainers) is being developed by Goodrich Aerospace and Airbus.
>
> Consequently, EASA issued AD 2017–0138, retaining the requirements of EASA AD 2016–0010R1, which was superseded, and, except for aeroplanes equipped with engines fitted with a TRF with 4 lugs configuration, requiring modification and identification of aft engine mount assemblies as terminating action for the repetitive inspections of the retainers. That [EASA] AD also included additional instructions applicable to installation of engines fitted with a TRF with 4 lugs configuration.
>
> Since EASA AD 2017–0138 was issued, it was determined that installation of new engine mount assemblies must not be allowed for some specific engine configurations, and that installation of Goodrich Aerostructures SB RA32071–164 alone can be referred to, in order to accomplish the terminating action as required by that [EASA] AD.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2017–0138, which is superseded, adds reference to Goodrich Aerostructures SB RA32071–164 * * *, and introduces new requirement for aeroplanes equipped with engines fitted with a TRF with 4 lugs configuration.

This AD does not supersede AD 2017–04–10. Rather, we have

determined that a stand-alone AD is more appropriate to address the changes in the MCAI. This AD requires modifying and re-identifying the aft engine mount assemblies. Accomplishment of the required actions terminates the repetitive detailed inspections required by paragraph (l) of AD 2016–14–09, and serve as a method of compliance for the requirements of paragraph (g) of AD 2017–04–10. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0165.

**Comments**

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

**Support for the NPRM**

Air Line Pilots Association, International (ALPA) supported the intent of the NPRM.

**Request To Refer to Current Revision of Service Information**

Airbus SAS noted that it issued Service Bulletin A320–71–1071, Revision 01, dated October 17, 2017, and requested that this revision of the service bulletin be included in the final rule. The original issue of Service Bulletin A320–71–1071, dated November 8, 2016, was referred to in the proposed AD.

We agree with the commenter's request. Airbus Service Bulletin A320–71–1071, Revision 01, dated October 17, 2017, clarifies certain notes and references but makes no substantive changes to Airbus Service Bulletin A320–71–1071, dated November 8, 2016, as proposed in the NPRM. Furthermore, while Airbus Service Bulletin A320–71–1071, Revision 01, dated October 17, 2017, expands the effectivity, the applicability of this AD has not been changed. We have revised the preamble of this final rule and paragraph (h) of this AD to include Airbus Service Bulletin A320–71–1071, Revision 01, dated October 17, 2017. We have also added paragraph (n) to this AD to provide credit for actions done prior to the effective date of this AD using the original issue of Airbus Service Bulletin A320–71–1071, dated November 8, 2016. We redesignated subsequent paragraphs accordingly.

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

**Related Service Information Under 1 CFR Part 51**

Airbus SAS has issued Service Bulletin A320–71–1071, Revision 01, dated October 17, 2017. Goodrich Aerostructures has issued Service Bulletin RA32071–164, Revision 1, dated July 19, 2017. The service information describes procedures for modifying and re-identifying the aft engine mount retainer assembly. These documents are distinct since they apply to different airplane models in different configurations.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

We estimate that this AD affects 500 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Modification and re-identification ..... | 20 work-hours × $85 per hour = $1,700 ..... | $3,152 | $4,852 | $2,426,000 |

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

**Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866,

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

3. Will not affect intrastate aviation in Alaska, and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2018–16–02 Airbus SAS:** Amendment 39–19342; Docket No. FAA–2018–0165; Product Identifier 2017–NM–122–AD.

**(a) Effective Date**

This AD is effective September 13, 2018.

**(b) Affected ADs**

This AD affects AD 2016–14–09, Amendment 39–18590 (81 FR 44989, July 12, 2016) (''AD 2016–14–09''); and AD 2017–04–10, Amendment 39–18805 (82 FR 11791, February 27, 2017) (''AD 2017–04–10'').

**(c) Applicability**

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model A318–111 and –112 airplanes.

(2) Model A319–111, –112, –113, –114, and –115 airplanes.

(3) Model A320–211, –212, –214, and –216 airplanes.

(4) Model A321–111, –112, –211, –212, and –213 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 71, Powerplant.

**(e) Reason**

This AD was prompted by a report of a production quality deficiency on the inner retainer installed on link assemblies of the aft engine mount, which could result in failure of the retainer. We are issuing this AD to address non-conforming retainers of the aft engine mount. This condition could result in loss of the locking feature of the nuts of the inner and outer pins; loss of the pins will result in the aft mount engine link no longer being secured to the aft engine mount, possibly resulting in damage to the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Definitions**

(1) For the purpose of this AD: A Group 1 airplane has an aft engine mount assembly installed, having a part number (P/N) identified as ''Old P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD. A Group 2 airplane does not have any aft engine mount assembly installed having a part number identified as ''Old P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD.

**Figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD –**

*Part re-identification*

| Old P/N | New P/N |
|---|---|
| 238-0230-11 | 238M0230-11 |
| 238-0230-15 | 238M0230-15 |
| 238-0230-5 | 238M0230-5 |
| 642-2300-3 | 642-2300-11 |

(2) For the purpose of this AD, a 4-lugs engine is a CFM56–5A1, CFM56–5A3, CFM56–5A4, CFM56–5A4/F, CFM56–5A5, or CFM56–5A5/F engine, fitted with a turbine rear frame (TRF) having a part number as identified in figure 2 to paragraph (g)(2) of this AD.

**Figure 2 to paragraph (g)(2) of this AD –** *TRF with 4-lugs configuration*

| Part Number |
|---|
| 336-031-615-0 |
| 336-031-617-0 |
| 336-031-618-0 |
| 336-031-621-0 |
| 336-031-650-0 |
| 336-031-651-0 |
| 336-031-652-0 |
| 336-031-653-0 |
| 336-031-660-0 |
| 336-031-661-0 |
| 336-031-662-0 |
| 336-031-663-0 |
| 336-031-670-0 |
| 336-031-671-0 |
| 336-031-672-0 |
| 336-031-673-0 |
| 336-031-640-0 |
| 336-031-642-0 |

**(h) Modification**

For Group 1 airplanes: Within 48 months after the effective date of this AD, except for 4-lugs engines, modify the aft engine mount assembly, having a part number identified as ''Old P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD, and re-identify it with the corresponding part number identified as ''New P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–71–1071, Revision 01, dated October 17, 2017; or Goodrich Aerostructures Service Bulletin RA32071–164, Revision 1, dated July 19, 2017.

**(i) Other Acceptable Method of Compliance**

Replacement on an airplane of each aft engine mount assembly, identified as ''Old P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD, with a corresponding aft engine mount assembly, identified as ''New P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD, is an acceptable method to comply with the requirements of paragraph (h) of this AD for that airplane.

**(j) Identification of Certain Airplanes That Do Not Have Affected Parts**

An airplane on which Airbus Modification 158435 has been embodied in production and on which it can be positively determined that no aft engine mount assembly, identified as ''Old P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD, is installed, is considered a Group 2 airplane. A review of airplane maintenance records is acceptable to make this determination, if it can be conclusively determined that no aft engine mount assembly identified as ''Old P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD is installed. Group 2 airplanes are not affected by the requirements of paragraph (h) of this AD.

**(k) Parts Installation Prohibition**

(1) For Group 1 airplanes: Do not install an aft engine mount assembly identified as ''Old P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD on any airplane after modification of the airplane as required by paragraph (h) of this AD, or after any replacement specified in paragraph (i) of this AD.

(2) For Group 2 airplanes: As of the effective date of this AD, do not install an aft engine mount assembly identified as ''Old P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD on any airplane.

(3) For airplanes equipped with a 4-lugs engine (left-hand (LH) or right-hand (RH) side): As of the effective date of this AD, do not modify any aft engine mount assembly identified as ''Old P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD, as required by paragraph (h) of this AD, and do not install on an affected engine pylon (LH or RH) any aft engine mount assembly identified as ''New P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD.

**(l) 4-Lugs Engine Installation**

(1) From the effective date of this AD, it is allowed to install or reinstall a 4-lugs engine on an airplane (LH or RH) provided that the airplane is equipped with an aft engine mount assembly identified as ''Old P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD on the affected engine pylon (LH or RH).

(2) For airplanes equipped with a 4-lugs engine (LH or RH), and on which, prior to the effective date of this AD, an aft engine mount assembly identified as ''New P/N'' in figure 1 to paragraphs (g)(1), (h), (i), (j), (k), and (l) of this AD has been installed on the affected engine pylon (LH or RH), or on which the aft engine part assembly has been modified as specified in paragraph (h) of this AD: Within 30 days after the effective date of this AD, obtain repair instructions using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA), and accomplish those instructions accordingly. If approved by the DOA, the approval must include the DOA-authorized signature.

**(m) Terminating Action and Method of Compliance**

(1) Modification of an airplane as required by paragraph (h) of this AD, or as specified in paragraph (i) of this AD, constitutes terminating action for the repetitive detailed inspections required by paragraph (l) of AD 2016–14–09 for that airplane.

(2) Modification of an airplane as required by paragraph (h) of this AD, or as specified in paragraph (i) of this AD, is a method of compliance with the requirements of paragraph (g) of AD 2017–04–10 for that airplane.

**(n) Credit for Previous Actions**

This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–71–1071, dated November 8, 2016, and the actions were not performed on 4-lugs engines.

**(o) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (q)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS' EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(p) Special Flight Permits**

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

**(q) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0251 dated December 15, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0165.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (r)(3) and (r)(5) of this AD.

**(r) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A320–71–1071, Revision 01, dated October 17, 2017.

(ii) Goodrich Aerostructures Service Bulletin RA32071–164, Revision 1, dated July 19, 2017.

(3) For Airbus SAS service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; internet *http://www.airbus.com.*

(4) For Goodrich Aerospace service information identified in this AD, contact Goodrich Corporation, Aerostructures, 850 Lagoon Drive, Chula Vista, CA 91910–2098; phone: 619–691–2719; email: *jan.lewis@goodrich.com*; internet: *http://www.goodrich.com/TechPubs.*

(5) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on July 23, 2018.

**James Cashdollar,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018–16504 Filed 8–8–18; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 301

**[TD 9839]**

**RIN 1545–BN41**

## Partnership Representative Under the Centralized Partnership Audit Regime and Election To Apply the Centralized Partnership Audit Regime

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation and removal of temporary regulations.

**SUMMARY:** This document contains final regulations regarding the designation and authority of the partnership representative under the centralized partnership audit regime, which was enacted into law on November 2, 2015 by section 1101 of the Bipartisan Budget Act of 2015 (BBA). These final regulations affect partnerships for taxable years beginning after December 31, 2017. This document also contains final regulations and removes temporary regulations regarding the election to apply the centralized partnership audit regime to partnership taxable years beginning after November 2, 2015 and before January 1, 2018 under section 1101(g)(4) of the BBA. These final regulations affect partnerships for taxable years beginning after November 2, 2015 and before January 1, 2018.

**DATES:**

*Effective date:* These regulations are effective on August 9, 2018.

*Applicability Date:* For dates of applicability, see §§ 301.6223–1(h), 301.6223–2(f), and 301.9100–22(e).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations under §§ 301.6223–1 and 301.6223–2, Joy E. Gerdy Zogby of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317–4927; concerning § 301.9100–22, Jennifer M. Black of the Office of Associate Chief Counsel (Procedure and

Administration), (202) 317–6834 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains final regulations to amend the Procedure and Administration Regulations (26 CFR part 301) under Subpart—Tax Treatment of Partnership Items to implement the rules for the partnership representative under the centralized partnership audit regime enacted by section 1101 of the BBA, Public Law 114–74. Section 1101 of the BBA was amended on December 18, 2015, by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113, and on March 23, 2018 by the Tax Technical Corrections Act of 2018, which was enacted into law as part of the Consolidated Appropriations Act of 2018, Public Law 115–141. Section 301.6223–1 provides the rules regarding the designation of the partnership representative, § 301.6223–2 provides the rules regarding the authority of the partnership representative, and § 301.9100–22 provides the rules for making the election under section 1101(g)(4) of the BBA with respect to returns filed for partnership taxable years beginning after November 2, 2015 and before January 1, 2018.

On August 5, 2016, the Treasury Department and the IRS published in the **Federal Register** (81 FR 51795) temporary regulations (TD 9780) regarding the time, form, and manner for making an election to apply the centralized partnership audit regime to partnership taxable years beginning after November 2, 2015 and before January 1, 2018. On the same day, the Treasury Department and the IRS published in the **Federal Register** (81 FR 51835) a notice of proposed rulemaking (REG–105005–16) cross-referencing the temporary regulations. No comments were received in response to the proposed regulations, and no hearing was requested or held.

On June 14, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 27334) a notice of proposed rulemaking (REG–136118–15) regarding a number of provisions of the centralized partnership audit regime, including section 6223, relating to the partnership representative (June 14 NPRM). A public hearing regarding the proposed regulations was held on September 18, 2017. The Treasury Department and the IRS also received written public comments in response to the proposed regulations, including comments regarding the partnership representative under section 6223.

On November 30, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 56765) a notice of proposed rulemaking (REG–119337–17) regarding international rules under the centralized partnership audit regime. On December 19, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 27071) a notice of proposed rulemaking (REG–120232–17) regarding certain procedural rules under the centralized partnership audit regime, including proposed § 301.6231–1 regarding notices that are required to be mailed to partnerships (December 19 NPRM). On January 2, 2018, the Treasury Department and the IRS published in the **Federal Register** (82 FR 28398) final regulations for electing out of the partnership audit regime. On February 2, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 4868) a notice of proposed rulemaking (REG–118067–17) regarding rules for adjusting tax attributes under the centralized partnership audit regime.

After careful consideration of all written public comments and statements made during the public hearing relating to section 6223, the portions of the June 14 NPRM relating to section 6223 are adopted as amended by this Treasury Decision. These amendments are discussed in the next section. Examples were revised to conform to the amendments discussed in the next section, and clarifying and editorial revisions were also made. The Treasury Department and the IRS received no comments with respect to proposed § 301.9100–22 and made no substantive revisions to the proposed regulations. Accordingly, the final regulations adopt the proposed regulations without any substantive change. Minor editorial changes were made. The temporary regulations are removed.

## Summary of Comments and Explanation of Revisions

### *1. Partnership Representative*

In response to the June 14 NPRM, the Treasury Department and the IRS received 33 written comments, and five statements were provided at the public hearing. All comments (both written and provided orally at the public hearing) were considered, and written comments are available for public inspection at *www.regulations.gov* or upon request. This preamble addresses only the comments or portions of comments relating to the proposed regulations under section 6223, which are the proposed regulations from the June 14 NPRM being finalized in this Treasury Decision. Comments, or any portion of a comment, that relate to other aspects of the proposed regulations in the June 14 NPRM that have not yet been finalized will be addressed when final regulations regarding those provisions are published. The comments relating to the proposed regulations under section 6223 cover a broad range of topics, including eligibility to serve as the partnership representative, designating and changing a partnership representative, and the binding effect and authority of the partnership representative. These comments were considered and revisions to the regulations were made in response to the comments.

#### A. Eligibility To Serve as the Partnership Representative

Proposed § 301.6223–1(b)(1) provided that a partnership may designate any person that has a substantial presence in the United States and that has the capacity to act to be the partnership representative. If an entity is designated as the partnership representative, the partnership must appoint a designated individual to act on the entity's behalf. See proposed § 301.6223–1(b)(2), (3), and (4).

One comment recommended that § 301.6223–1(b)(1) explicitly provide that a disregarded entity can serve as the partnership representative. This comment has been adopted. Any person as defined in section 7701(a)(1), including an entity, can serve as the partnership representative provided that person meets the requirements of § 301.6223–1(b). Therefore, § 301.6223–1(b)(1) has been revised to clarify that a disregarded entity can be a partnership representative. Because a disregarded entity is not an individual and is an entity partnership representative, the partnership must appoint a designated individual to act on behalf of the disregarded entity in accordance with § 301.6223–1(b)(3). In addition, both the disregarded entity and the designated individual must have substantial presence as described in § 301.6223–1(b)(2).

Section 301.6223–1(b)(1) has also been revised to clarify that a partnership may designate itself as its own partnership representative. The rules regarding eligibility to serve as a partnership representative are designed to permit the partnership to designate the person it believes is most appropriate to serve as partnership representative, provided that person meets the requirements of § 301.6223–1(b)(2) (substantial presence) and

§ 301.6223–1(b)(3) (designated individual). Therefore, a partnership may serve as its own partnership representative if the partnership has substantial presence in the United States and also appoints a designated individual that has a substantial presence in the United States to act on the partnership's behalf in the partnership's role as partnership representative.

One comment recommended that the regulations confirm that, in the case of an entity designated as partnership representative, the designated individual does not have to be an employee of that entity. Nothing in the regulations requires that the designated individual be an employee of the entity partnership representative. As explained in part 4.F. of the preamble to the June 14 NPRM, an entity with no employees is permitted to be the partnership representative provided the partnership appoints a designated individual to act on behalf of that entity and both the entity and the designated individual have substantial presence in the United States. Because the plain language of the regulation does not require the designated individual to be an employee of the entity partnership representative, no clarification is necessary and the comment was not adopted.

Another comment suggested that a partnership should not be required to appoint a designated individual to act for an entity partnership representative until the IRS issues a notice of administrative proceeding (NAP) or the partnership files a valid administrative adjustment request (AAR) under section 6227. This comment was not adopted. The purpose of the designated individual requirement is to have an individual identified who can act on behalf of the entity partnership representative prior to the beginning of an administrative proceeding under subchapter C of chapter 63 (administrative proceeding). If no designated individual is appointed and the IRS initiates an administrative proceeding, neither the partnership nor the IRS will know who has the authority to act on behalf of the entity partnership representative. This could delay the beginning of the proceeding and consequently slow down the administrative proceeding.

As explained in part 2.D. of the preamble to the June 14 NPRM, these types of delays frequently occurred under TEFRA. Under TEFRA, partnerships and the IRS often spent a significant amount of time establishing that a person designated as the tax matters partner (TMP) was qualified to be the TMP or, in the case of an entity TMP, identifying and locating an individual to act on the entity's behalf. Also as explained in part 2.D. of the preamble to the June 14 NPRM, the introduction of the partnership representative concept under the centralized partnership audit regime was intended to address the shortcomings of the TMP rules. Accordingly, the proposed regulations required the partnership to identify and appoint a designated individual prior to the start of an administrative proceeding to avoid a delay related to locating and confirming the identity of an individual to act on behalf of an entity partnership representative. With that objective in mind, the final regulations maintain the rule that in the case of an entity partnership representative, the partnership must appoint a designated individual at the time the partnership representative is designated.

Another comment suggested that the entity partnership representative itself, rather than the partnership, should appoint the designated individual. The partnership makes the initial designation of the partnership representative on the partnership's return. When an entity is chosen, the partnership must appoint a designated individual to act on behalf of the entity partnership representative. See § 301.6223–1(c)(2). While this rule requires that the partnership appoint the designated individual, nothing in the regulations precludes the entity partnership representative from identifying who the designated individual should be and communicating that decision to the partnership. Ultimately, however, the partnership must determine who will be the partnership representative. Determining who will be the designated individual to act on behalf of an entity partnership representative is part of that determination. Therefore, the final regulations retain the rule that the partnership must appoint the designated individual on its partnership return for the relevant taxable year.

This rule ensures that designation of the entity partnership representative and appointment of the designated individual occur simultaneously on the partnership return with the result that it will be clear to both the partnership and the IRS at the time the partnership return is filed who has the authority to act on behalf of the partnership for the taxable year for which the return is filed for purposes of the centralized partnership audit regime. As discussed previously in this section of the preamble, under TEFRA, the IRS spent significant time and resources determining who was the TMP. If that TMP was an entity, the IRS and taxpayers spent additional time and resources determining who could act on behalf of the entity TMP under state law. Moreover, in cases where state law permitted an entity to act on behalf of an entity TMP, the IRS and the partnership had to identify an individual who could act on behalf of that entity to determine someone who could ultimately act on behalf of the entity TMP. The rule under § 301.6223–1(c)(2) allows the IRS and the partnership to readily identify who can act on behalf of the partnership representative without having to inquire into who has the state law authority to act on behalf of the entity partnership representative. Because the partnership makes the designated individual appointment under the final regulations, the rule eliminates the time spent determining who can act for the partnership.

This rule is also necessary because under the centralized partnership audit regime an entity partnership representative can only act through a designated individual. To achieve this, the partnership must appoint the designated individual for the entity partnership representative to take action under the centralized partnership audit regime. Prior to the appointment of a designated individual, the entity partnership representative does not have the ability to act under the centralized partnership audit regime. Accordingly, the comment recommending the partnership representative make the designated individual appointment was not adopted, and § 301.6223–1(b)(3)(ii) has been modified to clarify that the partnership must appoint the designated individual.

i. Substantial Presence

Section 6223(a) provides that a partnership representative must have a substantial presence in the United States. Proposed § 301.6223–1(b)(2) provided that a person has substantial presence in the United States for purposes of section 6223 if the person is able to meet in person with the IRS in the United States at a reasonable time and place, has a United States street address and telephone number where the person can be reached during normal business hours, and has a United States taxpayer identification number (TIN). Several comments suggested that the first two criteria for substantial presence were too vague and recommended clarification of what is considered reasonable with respect to the time and place for meetings between

the partnership representative and the IRS and whether the reference to normal business hours is determined based on the IRS's business hours or based on the partnership's business hours.

Section 301.6223–1(b)(2) is designed to allow the partnership and the IRS maximum flexibility to determine mutually convenient times to meet, to schedule phone calls, and to share information, while at the same time ensuring that the partnership and its books and records are available to the IRS during the administrative proceeding. Because what constitutes a reasonable time and place depends on the facts and circumstances, providing specific rules by regulation applicable to every circumstance that could arise in an administrative proceeding is not feasible and, even if it were, doing so would interfere with rather than facilitate a productive environment for the administrative proceeding. There are existing regulations relating to the reasonable time and place for an examination in § 301.7605–1 that are applicable to the centralized partnership audit regime. Section 301.7605–1(a) states: ''The time and place of examination . . . are to be fixed by an officer or employee of the Internal Revenue Service, and officers and employees are to endeavor to schedule a time and place that are reasonable under the circumstances.'' To address the comment, the regulations under § 301.6223–1(b)(2) have been clarified to include a cross-reference to these provisions.

With respect to the comment regarding the meaning of ''normal business hours,'' the Treasury Department and the IRS agree that this terminology is confusing. In addition, cross-referencing the rules for the time and place of examination under § 301.7605–1 makes this term unnecessary. Therefore, the final regulations remove the reference in § 301.6223–1(b)(2)(ii) to normal business hours. The partnership representative still must have a telephone number with a United States area code, but the reference to normal business hours has been removed to avoid confusion regarding what constitutes normal business hours.

The Treasury Department and the IRS also revised the phrase in § 301.6223–1(b)(2)(i)—''The person is available to meet in person with the IRS''—to read—''The person makes themselves available to meet in person with the IRS.'' This change was made to distinguish between a partnership representative who is generally available to meet and works with the IRS to facilitate communications and a partnership representative who is generally available but refuses to meet with the IRS. Examples have also been added under § 301.6223–1(b)(4) to illustrate this clarification.

Another comment recommended that regulations under proposed § 301.6223–1(b)(2) establish a ''safe harbor'' for substantial presence that would allow the partnership to designate a location in the United States for purposes of communications between the partnership representative and the IRS, similar to how businesses designate a registered agent and an address for accepting service of process. Section 301.6223–1(b)(2)(ii) requires the partnership to provide a United States street address and phone number where the partnership representative can be reached by United States mail and telephone. This rule already allows the partnership to designate a location within the United States for communications between the partnership representative and the IRS, including receipt of formal documents from the IRS. However, in addition to having a United States street address and telephone, a partnership representative must also make themselves available to meet in person with the IRS. As discussed in part 2.D of the preamble to the June 14 NPRM, the purpose of the substantial presence requirement is to ''ensure that the person selected to represent the partnership will be available to the IRS in the United States when the IRS seeks to communicate or meet with the representative.'' Because the partnership representative must make themselves available to meet with the IRS, the partnership representative may have any telephone number with a United States area code and a street address in any location in the United States, provided the telephone number and street address allow the IRS to contact the partnership representative. Consequently, an explicit ''safe harbor'' for substantial presence is unnecessary, and the comment has not been adopted.

ii. Capacity To Act

One of the components of eligibility to serve as a partnership representative or designated individual under the proposed regulations was the capacity to act. Proposed § 301.6223–1(b)(4) described five specific events that cause a person to lose the capacity to act for purposes of section 6223 and included a catch-all provision for any unforeseen circumstances in which the IRS reasonably determined a person may no longer have the capacity to act. If a partnership representative lost the capacity to act under proposed § 301.6223–1(b)(4), the IRS could determine that the designation of the partnership representative or appointment of a designated individual was not in effect. See proposed § 301.6223–1(f). Additionally, where all general partners lost the capacity to act, a partner other than a general partner could sign a revocation of the partnership representative. See proposed § 301.6223–1(e).

In response to the capacity-to-act requirements in the proposed regulations, one comment recommended that the list of circumstances under proposed § 301.6223–1(b)(4) be expanded to include other specific situations such as when the person has been convicted of a felony or a crime that involves dishonesty or breach of trust, when the person is in bankruptcy or receivership, or when the person is known to be under criminal investigation for a violation of the Code. The same comment recommended that standards or limitations be included within the catch-all provision under proposed § 301.6223–1(b)(4)(vi), which provides that a person loses the capacity to act in ''any similar situation where the IRS reasonably determines the person may no longer have capacity to act.'' Another comment suggested that if a partnership becomes aware that the partnership representative lacks the capacity to act, the regulations should require the partnership to revoke that partnership representative's designation.

The capacity-to-act requirement was intended to correspond to situations where the person would not be able to represent the partnership during the administrative proceeding, for instance, when the person died, was legally incapacitated, or was otherwise unable to act during the administrative proceeding. After reviewing the comments regarding capacity to act, the Treasury Department and the IRS reevaluated whether such a requirement is needed. Rather than creating a regulatory requirement for who should be the partnership representative or a designated individual, the Treasury Department and the IRS believe that partnerships are in the best position to make the decision as to who can best represent them before the IRS. For the reasons discussed below, the Treasury Department and the IRS have determined that regulations regarding capacity to act would provide an unnecessary limitation on the partnership's choice of who it believes is the best person to act on the partnership's behalf. Therefore, the comments have not been adopted, and

the capacity-to-act requirement has been removed from the final regulations.

Under the proposed regulations, the partnership had complete control over who is designated as the partnership representative and appointed as a designated individual so long as the person designated or appointed satisfies the substantial presence requirement. Further, the partnership had the unilateral power to revoke the partnership representative for any reason. Therefore, the partnership can adequately protect itself if the concept of capacity is removed since it can revoke the partnership representative.

Beyond requiring a partnership representative to have a substantial presence in the United States, the Treasury Department and the IRS have determined that it is not the proper role of the IRS to make further inquiries into whether, in the view of the IRS, the designated partnership representative or designated individual is the right person to represent the partnership. For example, some partnerships may not wish to be represented by a partnership representative that has filed for bankruptcy. But, in other cases, the partnership may determine that the partnership representative's bankruptcy status is not relevant to whether the person can serve as partnership representative.

By setting forth specific capacity factors, like bankruptcy, for making someone ineligible to act on behalf of the partnership, the regulations would be unnecessarily supplanting the partnership's judgment with that of the government. Accordingly, the final regulations remove the capacity-to-act requirement entirely because the partnership should have as much flexibility as possible in determining a partnership representative so long as the person meets the substantial presence requirements. Because this section has been removed, the cross-reference to that section in § 301.6223–1(e) has also been removed. In addition, because this section has been removed, the comment suggesting that the IRS clarify that the partnership must require a revocation if it becomes aware that one of the capacity-to-act circumstances applies to its partnership representative is inapplicable and therefore is not adopted.

Although the capacity-to-act section has been removed from the final regulations, the IRS may still determine that a designation of the partnership representative is not in effect due to circumstances that would have resulted in a partnership representative not having capacity to act because at least some of the capacity-to-act requirements overlapped with substantial presence. For instance, the IRS may determine that a partnership representative designation is not in effect if the partnership representative is incarcerated because that partnership representative cannot make herself available to the IRS, which means the partnership representative does not satisfy the substantial presence requirement. Having a separate capacity-to-act requirement was duplicated in these circumstances.

Two of the specified circumstances listed in proposed § 301.6223–1(b)(4) involve determinations by a court that restrict a partnership representative's or designated individual's ability to serve. These circumstances would likely arise very rarely, and the IRS would likely not know these circumstances exist unless they were brought to the IRS's attention by a partner or the partnership itself. In the case of a court order stating that a person does not have capacity to manage his or her estate, the IRS may not know about this issue because the very nature of such a proceeding is sensitive and may not be made public. In the case of a court order in which an injunction was sought, the most likely parties to seek such an injunction would be partners or the partnership itself. The partnership, generally through its reviewed year partners, may revoke a partnership representative designation without the need for a court order, which would alleviate the need for a partnership or partner to pursue a court-ordered injunction. Even if such a court order existed, the IRS would need to review the court order to determine to what degree it inhibited a partnership representative from acting on behalf of the partnership. Because these circumstances would be rare, and because there would need to be actual knowledge of the court order as well as at least some interpretation of that court order, the Treasury Department and the IRS have removed these circumstances, which were previously listed in proposed § 301.6223–1(b)(4), from the regulations.

B. Designating or Changing a Partnership Representative or a Designated Individual

Multiple comments recommended changes to the timing and mechanics for designating, appointing, and changing a partnership representative and designated individual. The comments included suggestions about the timing of when a change should occur, the effective date of such a change, notice requirements surrounding the change, and who can revoke a designation.

One comment suggested clarification regarding whether a partnership that has elected out of the centralized partnership audit regime under section 6221(b) must designate a partnership representative. A partnership that has elected out of the centralized partnership audit regime is not required to designate a partnership representative. The partnership representative is the person who has the sole authority to act on behalf of the partnership under the centralized partnership audit regime. If a partnership is not subject to the centralized partnership audit regime, a partnership representative has no authority with respect to the partnership. Nothing in the regulations requires a partnership that has elected out of the regime to designate a partnership representative. Therefore, the comment was not adopted.

i. Time for Changing the Partnership Representative

Under proposed § 301.6223–1(d)(2) and (e)(2), a partnership representative designation can only be changed after the IRS mails a NAP or in conjunction with the filing of a valid AAR by the partnership under section 6227. Several comments suggested that proposed § 301.6223–1(d)(2) and (e)(2) be revised to allow for changes to the partnership representative at any time after the original designation. One comment specifically recommended that the IRS adopt a system to monitor designations of and changes to partnership representatives in the same way that the IRS monitors the last known address of taxpayers.

Allowing partnerships to change the partnership representative designation with the IRS at any time after the original designation is unnecessary and burdensome from a tax administration perspective and may increase burden for partnerships that are not selected for an administrative proceeding and have not filed an AAR. This is because the responsibilities and authority of a partnership representative are generally applicable only if a partnership is selected for examination as part of an administrative proceeding or the partnership files an AAR. In many cases, allowing partnerships to change the partnership designation before an administrative proceeding begins or before the partnership files an AAR means that the partnership would be filing a request to change a partnership representative that never takes, or plans to take, any action under the centralized partnership audit regime.

Further, preparing and filing a request to change a designation of a partnership

representative requires partnerships to expend time and resources. Because the partnership representative designation may differ each year, tracking which partnership representatives were listed on which returns, and if a change were made, tracking those changes, can become complex. A partnership agreement requiring consultation with the partners (which may differ from year to year) when there is a change in the partnership representative adds further complexity.

For its part, the IRS would have to process requests to change a designation and associate that change with the correct partnership account even if the IRS never selects the partnership taxable year for an administrative proceeding and, therefore, never interacts with the partnership representatives. Currently, the IRS does not have a system to process these changes outside of the administrative proceeding process or when an AAR is filed.

A comment recommended that the IRS develop a system to track changes in the designation of the partnership representative that is similar to the system used to monitor a taxpayer's last known address. Development of such a system would be very costly with little benefit to be gained because, as discussed above, the majority of changes would be for partnerships whose partnership representatives would never take any action on behalf of such partnerships.

Accordingly, the final regulations maintain the rule that a partnership representative may only be changed in the context of an administrative proceeding or in conjunction with the filing of a valid AAR. As the IRS gains experience with the centralized partnership audit regime, and methods are identified to alleviate the administrative and regulatory burden created by changes to a partnership representative designation before the commencement of an administrative proceeding, the rules may be revisited in future forms, instructions, or other guidance.

To address the aspect of the comments that reflect a desire to be able to change the partnership representative prior to the beginning of the administrative proceeding, § 301.6223–1(e)(2) has been revised to allow the partnership to change the partnership representative through revocation when the partnership is notified that the partnership return is selected for examination as part of an administrative proceeding, in addition to when the NAP is mailed. In general, the IRS will issue the partnership, but not the partnership representative, a notice of selection for examination prior to mailing the NAP to inform the partnership that it is being selected for examination. Under the proposed regulations, the partnership was not able to change the partnership representative until it received the NAP.

This rule will provide the partnership an opportunity to change its partnership representative before an administrative proceeding commences, allowing the partnership to be represented by the partnership representative of its choice throughout the administrative proceeding. Because the notice of selection for examination is only issued to the partnership, and not the partnership representative, this rule allows the partnership to make a change to the partnership representative without the involvement of the partnership representative (whom the partnership may be removing for cause). As a result of the revised rule, the NAP can be sent to the partnership's preferred partnership representative at the time the administrative proceeding begins. The rule also allows the partnership to change a designated individual prior to the beginning of the administrative proceeding.

Other comments suggested that the designation of the partnership representative should be required on an annual basis, that the currently designated partnership representative should have the sole authority to represent the partnership for all open years, and that partnerships should be required to designate one partnership representative for all years in the context of a multi-year administrative proceeding.

Under § 301.6223–1(c), a partnership must designate the partnership representative on the partnership return for that partnership taxable year, that is, Form 1065, *U.S. Return of Partnership Income.* Identification of a partnership representative on an annual basis with the return provides certainty regarding who is the partnership representative for a particular taxable year. The other systems suggested in the comments would be difficult to administer and could result in the IRS having to determine that no designation of a partnership representative is in effect because of this uncertainty.

Designation of a partnership representative on the return for that taxable year is also not an undue burden on the partnership. The identification, selection, and designation of the partnership representative is wholly within the discretion of the partnership (provided the person designated meets the requirements under § 301.6223–1(b)). Nothing in the proposed regulations prevents a partnership from designating the same partnership representative on each partnership return it files or, once administrative proceedings with respect to more than one taxable year have commenced, designating one partnership representative (through the revocation procedures described in proposed § 301.6223–1(e)) to act for the partnership for all years subject to the administrative proceeding.

Further, the partnership representative plays an important role in representing the interests of the partnership and, by extension, the partners for the taxable year subject to an administrative proceeding. The make-up of the partners in a partnership may change from tax year to tax year, and the economic arrangements within the partnership and between partners may also change. The partnership and its partners for each particular taxable year are in the best position to determine who the partnership representative should be if that particular taxable year is subject to an administrative proceeding. For these reasons, the comments have not been adopted.

ii. Resignation

Proposed § 301.6223–1(d) provided the rules for resignations of partnership representatives and designated individuals. Proposed § 301.6223–1(d)(1) provided that a resignation by a partnership representative ''may'' include a designation of a successor partnership representative. However, when the resignation was made with the filing of an AAR, proposed § 301.6223–1(d)(2) provided that the partnership representative ''must'' designate a successor partnership representative. Proposed § 301.6223–1(d)(3) provided that a resigning designated individual ''may, but is not required to,'' designate a successor.

One comment noted the differences in the quoted language of these provisions and recommended that the final regulations be clarified to explain the consequences, if any, of those differences. The comment also questioned why the proposed regulations required designation of a successor partnership representative in the case of an AAR resignation, but not in the case of resignation that occurs during an administrative proceeding. The comment suggested that the rules should require designation of a successor for all resignations. In contrast, another comment recommended that a partnership representative never be permitted to designate a successor partnership

representative and suggested that the partnership have a 30-day window after a resignation to designate a successor partnership representative.

After considering these comments, the final regulations remove the ability of a resigning partnership representative or designated individual to designate a successor. Under the proposed rule, a resigning partnership representative had the power to designate a partnership representative even though the partnership might not approve of the new partnership representative. For instance, this could occur in a situation where the partnership representative is resigning due to an adverse relationship with the partnership. To avoid this result, the resignation of a partnership representative or designated individual should be the final action of that person for purposes of the centralized partnership audit regime.

For similar reasons, a resigning partnership representative should not be able to resign by filing an AAR. The partnership representative or designated individual may be revoked simultaneously with the filing of an AAR, though an AAR may not be filed solely for that purpose. See proposed § 301.6227–1(a). However, it is unfair to the partnership to allow a resigning partnership representative to request adjustments to items of a partnership. Accordingly, the final regulations have been revised to prohibit a resignation at the time of the filing of an AAR.

Proposed § 301.6223–1(d)(3) provided that a resignation of a designated individual is ''subject to the time of resignation restrictions described in [proposed] § 301.6223–1(d)(2),'' that is, the timing rules that apply to a resignation of a partnership representative. One comment requested clarification of whether the ability of a designated individual to resign is subject to all of the restrictions in proposed § 301.6223–1(d)(2) or whether the quoted language means some restrictions do not apply. As discussed above, the final regulations have been revised to remove the ability of a partnership representative to resign with the filing of an AAR; a partnership representative may resign only after a NAP has been issued by the IRS, or at such other time as prescribed by the IRS in other guidance. The final regulations have also been revised to provide that the rules governing when and how a partnership representative may resign also apply to designated individuals. Section 301.6223–1(d) provides specific rules explaining how a designated individual resigns. Therefore, clarification is not necessary, and the comment was not adopted.

iii. Revocation

Proposed § 301.6223–1(e)(3)(i) provided that a revocation must be signed by a person who was a general partner at the close of the taxable year for which the partnership representative designation is in effect as shown on the partnership return for that taxable year. One comment suggested that the language ''as shown on the partnership return'' be deleted to make clear that a partnership is not limited to revoking only the initial partnership representative designated on the partnership return.

The purpose of the quoted language was to describe how to determine whether a person was a general partner at the close of the taxable year, that is, by looking to the partnership return for that taxable year. It was not intended to describe what type of partnership representative designation can be revoked by the partnership. A partnership can revoke any designation of a partnership representative, including a designation made by the IRS, provided permission is granted by the IRS. See § 301.6223–1(e)(6). Sections 301.6223–1(e)(1) and (e)(4) have been revised to clarify this point.

The comment also suggested that any partner of the partnership, instead of only a general partner, should be able to sign a revocation provided that partner certifies the partner has the authority to do so. This comment was adopted in the final regulations. The final regulations allow any partner who was a partner during the partnership taxable year to which the revocation relates, not just a general partner, to sign a revocation. Allowing any partner for the taxable year to which the revocation relates to sign the revocation provides maximum flexibility to the partnership to determine which partners should have that authority.

The rules under proposed § 301.6223–1(e)(3)(ii) made clear that for purposes of determining who may sign a revocation for a limited liability company (LLC), a member-manager is treated as a general partner and any other member is treated as a non-general partner. These rules were necessary to clarify in the context of LLCs which members can sign a revocation. As discussed above in this section of the preamble, however, the proposed regulations have been revised to permit any partner during the taxable year to which the revocation relates, not just a general partner, to sign a revocation. Therefore, § 301.6223–1(e)(3)(ii) has been removed from the regulations because the rule equating member-managers with general partners is no longer necessary.

The comment also recommended that the ''catch-all'' provision under proposed § 301.6223–1(b)(4)(vi) (regarding capacity to act) also apply in determining whether partners other than a general partner can sign a revocation. Proposed § 301.6223–1(b)(4) has been removed from the final regulations and is no longer referenced in § 301.6223–1(e); therefore, this comment was not adopted. The references to capacity to act were necessary when only certain partners could revoke the designation. Because the regulations have been revised to allow any partner for the partnership taxable year to which the revocation relates to sign the revocation, there is no need to describe situations in which general partners do not have the capacity to act and no need for the associated catch-all provision.

Lastly, the comment recommended that the regulations explicitly provide that a partnership can revoke a partnership representative designation for any reason. As discussed in section 2.C. of this preamble, nothing in the regulations requires the partnership to have a specific reason, or any reason at all, for a revocation. However, this comment was adopted to clarify that neither a revocation nor a resignation requires any particular reason. The final regulations also clarify that a revocation may occur regardless of when and how the designation was made, except with respect to a designation made by the IRS. See § 301.6223–1(e)(6).

Proposed § 301.6223–1(e)(3)(ii) applied the rules for signing a revocation to LLCs and provided that for purposes of the proposed regulations the term LLC means an organization that, among other things, ''is classified as a partnership for Federal tax purposes.'' A comment recommended that the phrase ''is classified as a partnership for Federal tax purposes'' be removed from the definition of LLC because the quoted language creates confusion about whether the LLC has to be currently classified as a partnership for the proposed rules regarding revocation to apply. As discussed in this section of the preamble, § 301.6223–1(e)(3)(ii) has been removed from the regulations because the paragraph is no longer necessary in light of the changes to the revocation process.

While considering these comments, the Treasury Department and the IRS had the opportunity to reevaluate the portion of the rule in proposed § 301.6223–1(e)(3) that required a person revoking a designation to be a partner at the close of the taxable year

and determined that this rule is unnecessarily restrictive. This is because being a partner on the last day of the taxable year is not meaningful so long as the person is a partner during the taxable year. For instance, a person who is a partner on the last day of the taxable year could be a partner with a small interest in the partnership or could have acquired their interest in the partnership on the next to last day of the partnership taxable year, whereas a person who is a partner during the year but not on the last day of the year could have owned a very large interest in the partnership or could have been a partner for all days during the year, except the last day.

Further, while the partnership return identifies partners during the taxable year, it is not readily apparent from the face of the return or the Schedules K–1 who was a partner on the last day of the partnership taxable year. Therefore, the IRS could not easily determine if the partner signing the revocation was a partner on the last day of the taxable year.

Finally, there may be more partner turnover during a partnership's taxable year as a result of fewer partnership short taxable years after the repeal of technical terminations under section under 708(b)(1). *See* section 13504 of ''[a]n Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,'' Public Law 115–97. Generally, under a technical termination under section 708(b)(1)(B), when 50 percent or more of a partnership's capital and profits are sold or exchanged during any 12 month period, the partnership taxable year ended, causing a short partnership taxable year. However, after repeal of the technical termination rule, there can be significant partner turnover during a partnership's full taxable year without resulting in an early close of the partnership taxable year. Thus, partners who dispose of their partnership interest, and who would have been partners for a full taxable year at the close of a short partnership taxable year when there was a technical termination, are now partners for only part of a full 12 month partnership taxable year.

Accordingly, the final regulations have been revised to allow any person who was a partner at any time during the taxable year to which the revocation relates to sign the revocation. The final regulations were also revised to provide that the Treasury Department and the IRS may in the future provide forms, instructions, or other guidance that would allow the partnership to revoke the designation of a partnership representative if there are no reviewed year partners (as defined in proposed § 301.6241–1(a)(9)) at the time of revocation.

One comment also suggested that a partnership should be able to revoke an appointment of a designated individual without first revoking the entity partnership representative designation. This comment was adopted in § 301.6223–1(e). However, to ensure that the IRS has a contact point for the partnership, the regulations under § 301.6223–1(e)(1) have also been revised to provide that if a partnership revokes the appointment of a designated individual and not the entity partnership representative, the partnership must appoint a successor designated individual at the same time of the revocation. Similar to the rules under the regulations with respect to the partnership representative resignation, failure to follow the rules of § 301.6223–1(e), including failure to appoint a successor designated individual, results in an invalid revocation of the designated individual.

iv. Effective Date of a Resignation or Revocation

The proposed regulations provided that a resignation or revocation of the partnership representative (or designated individual, if applicable) is effective 30 days from the date on which the IRS receives written notification of the resignation or the revocation. See proposed § 301.6223–1(d)(1), (e)(1). One comment recommended that the IRS refrain from requiring time-sensitive actions or responses from the partnership during this 30-day period. Another comment recommended that a resignation or revocation of a partnership representative be immediately effective in certain situations, including when the partnership representative is the subject of a court order determining the partnership representative is incompetent or enjoining the partnership representative from serving as the partnership representative, the partnership representative is incarcerated, the partnership representative has become the subject of a criminal tax investigation, the partnership representative has been convicted of a felony or of a crime that involves dishonesty or breach of trust, or the partnership representative has become the subject of bankruptcy or receivership proceedings.

In response to these comments, § 301.6223–1(d) and (e) are revised to provide that generally a partnership representative resignation or revocation is effective immediately upon receipt by the IRS. In cases where there is a revocation of a partnership representative designated by the IRS, the final regulations provide that the revocation is effective on the date the IRS sends notification that it determined that the revocation is valid.

The comment requesting that the revocation or resignation be immediately effective on the date it is signed or sent was not adopted. Until it is received by the IRS, the IRS cannot be aware of a revocation or resignation to give it effect. Before the revocation or resignation is received, the IRS will continue to work with the person designated to represent the partnership as the partnership representative. Nothing in the regulations prevents a partnership or partnership representative from providing a revocation or resignation directly to the IRS employee handling the administrative proceeding to ensure that the IRS has received prompt notification of the change.

Proposed § 301.6223–1(d)(1) and (e)(1) provided that the IRS will notify the partnership and other affected persons (the resigning partnership representative or designated individual or the partnership representative (and designated individual, if applicable) whose status is being revoked) when the IRS receives a resignation or revocation. To provide assurance that the IRS has received and processed a resignation or revocation, these sections of the final regulations have been revised to provide that, no later than 30 days after receipt of a valid notification of a revocation or resignation, the IRS will notify the partnership and the resigning partnership representative or designated individual or the partnership representative (and designated individual, if applicable) whose status is being revoked of its acceptance.

Proposed § 301.6223–1(e)(4) provided that a partnership cannot revoke the designation of a partnership representative designated by the IRS unless the partnership receives permission from the IRS. The final regulations under § 301.6223–1(e)(6) are clarified to provide that the IRS will not unreasonably withhold such permission. To avoid confusion, § 301.6223–1(e)(3) and (6) have been revised to provide that when permission is granted, the IRS will send the notification described in paragraph § 301.6223–1(e)(1). The effective date of the revocation is the date of that notification, which, if the IRS is granting permission for the revocation of the IRS-designated partnership representative, will be sent no later than 30 days after receipt of the revocation.

v. Notification of Change

Proposed § 301.6223–1(d)(1) provided that a resigning partnership representative must notify the partnership and the IRS of the resignation, and proposed § 301.6223–1(e)(1) provided that when a partnership revokes a partnership representative designation, the partnership must notify the partnership representative and the IRS. Proposed § 301.6223–1(e)(3)(iii)(A)(*2*) required a notification of revocation to include a certification from the partner signing the revocation that the person has provided a copy of the revocation to the partnership and to the partnership representative whose designation is being revoked. Failure to include that certification rendered the revocation invalid. One comment recommended clarification on how this certification should be made when the partnership representative is deceased or dissolved or the partnership is no longer in contact with the partnership representative. The comment suggested that sending the copy of the revocation to the last known address should be sufficient. The comment also suggested that the regulations clarify whether there are any other restrictions on the method of notifying the partnership representative, such as proof of delivery or electronic delivery.

State law and any contractual arrangement between the parties generally control the terms of the relationship between the partnership and the partnership representative. Except as necessary to carry out the statute, the regulations implementing the centralized partnership audit regime attempt not to impose requirements with respect to interactions between the partnership and the partnership representative. The requirements in proposed § 301.6223–1(d)(1) and (e)(1) that the partnership notify the partnership representative and that the partnership representative notify the partnership were not consistent with this approach. Therefore, the Treasury Department and the IRS believe that including these requirements would unnecessarily create regulatory burdens on partnerships and partnership representatives without any significant benefit to tax administration. Accordingly, the final regulations have been revised to remove these requirements. Consequently, a resigning partnership representative and a partnership making a revocation must now only notify the IRS of the change in designation. As long as they notify the IRS as required under the regulations, the partnership and the partnership representative may agree to other notification requirements and are in the best position to determine if such requirements are necessary.

Another comment suggested that, in the case of an entity partnership representative, notification by the IRS of a revocation (as well as other notifications) should also be required to be sent to the designated individual. This comment was not adopted. In the case of a change to an entity partnership representative, the IRS will only send one notification and plans to adopt procedures under which such a notification will be sent to the partnership representative and addressed to the attention of the designated individual. This procedure should avoid the need to send duplicate notifications, which is burdensome for the IRS, while also allowing the partnership, the entity partnership representative, and the designated individual to arrange their affairs in a way to ensure that important notifications from the IRS are received by the appropriate persons.

Proposed § 301.6223–1(e)(1) required the IRS to notify the partnership and the affected partnership representative of a revocation. This requirement has been revised to provide that the IRS will only give notification of a revocation made after the issuance of a notice of selection for examination or a NAP. In contrast, the final regulations do not require the IRS to give notification of a revocation made simultaneously with an AAR. This change is warranted because in some cases, the IRS might accept an AAR as filed without further interaction with the partnership or communication with the partnership representative. Requiring the IRS to provide notification of a change in partnership representative when an AAR is filed is unnecessary unless the IRS selects the partnership for an examination as part of an administrative proceeding, in which case the partnership and the new partnership representative will receive a NAP, which is confirmation that the IRS received the change made on the AAR. The partnership can also confirm with the IRS at that time of receipt of the notice of selection for examination that the IRS received the change of partnership representative.

In addition, the final regulations clarify that the failure of the IRS to send any notifications under §§ 301.6223–1(d) and (e) to acknowledge receipt of a valid resignation or revocation does not invalidate the resignation or revocation. The notification provides the partnership with information about when the change in partnership representative became effective. However, the mere fact that a party does not receive an IRS notification does not mean that the resignation or revocation is not a valid change in partnership representative. A resignation or revocation that is valid under paragraph (d) or (e) of § 301.6223–1 is valid regardless of whether the IRS sends notification of receipt.

C. IRS Designation of Partnership Representative

i. Determination That a Designation Is Not in Effect

Proposed § 301.6223–1(f) provided the IRS may determine a designation is not in effect under certain circumstances. Under proposed § 301.6223–1(f)(1), if the IRS makes a determination that a designation is not in effect, the IRS will notify the partnership and ''the most recent partnership representative for that partnership taxable year'' of that determination. One comment noted that there may be circumstances where there was never a partnership representative for the taxable year and recommended the regulations be clarified on this point. The comment describes an example where the partnership representative designated on the partnership return lacks substantial presence and concludes that there would be no partnership representative in that case.

This conclusion is incorrect. A partnership representative designated under § 301.6223–1 is in effect unless and until the IRS determines otherwise. See § 301.6223–1(b)(1). Therefore, a person designated on a partnership return as the partnership representative is the partnership representative for that taxable year even if the person lacks substantial presence as defined in § 301.6223–1(b)(2) unless and until the IRS makes a determination, in accordance with § 301.6223–1(f), that the designation is not in effect. Accordingly, prior to the issuance of a notification from the IRS under § 301.6223–1(f)(1) that the partnership representative designation is not in effect, the designation of the partnership representative on the partnership return is in effect, even if the person designated lacks substantial presence in the United States.

Because a designated partnership representative is in effect unless and until the IRS determines otherwise, the vast majority of partnerships will have a partnership representative designation in effect because they will have designated the partnership representative on the return as required under § 301.6223–1(c). As a result, in most cases there will be a partnership

representative to whom the notification must be sent. However, there may be situations in which the partnership failed to make a valid designation in accordance with § 301.6223–1(c). To address these situations, the comment was adopted and § 301.6223–1(f)(1) has been revised to clarify that the IRS is not required to notify the most recent partnership representative if the partnership failed to designate one.

Another comment recommended that any determination that a designation is not in effect should not be made effective until a new partnership representative has been designated, either by the partnership or the IRS. This comment was not adopted. If there has been a determination that a partnership representative designation is not in effect for a taxable year, the IRS has determined that the partnership representative is no longer a valid partnership representative for purposes of conducting an administrative proceeding of that partnership with respect to that taxable year. To keep the designation in place would run counter to this determination and would hinder the partnership administrative proceeding. If, for example, the partnership representative no longer meets the substantial presence requirements under § 301.6223–1(b) because the partnership representative has left the country and, as a result, is unreachable, neither the partnership nor the IRS benefits from having that partnership representative designation remain in place until a new partnership representative is designated. The best result for both the partnership and the IRS is for the partnership to designate a new partnership representative who can move the administrative proceeding forward, which the partnership will have the opportunity to do prior to the IRS designating one under the rules in § 301.6223–1(f). Delaying the effective date of the determination that no partnership representative is in effect slows down the administrative proceeding, which does not benefit the partnership or the IRS.

Proposed § 301.6223–1(f)(2) provided a list of reasons why the IRS might determine that a partnership representative designation is not in effect. Proposed § 301.6223–1(f)(2) provided that the IRS may determine a designation is not in effect when, among other circumstances, the IRS has received multiple revocations within a 90-day period. See proposed § 301.6223–1(e)(7). One comment suggested that the regulations should limit the discretion of the IRS to determine that a designation is not in effect under proposed § 301.6223–1(f)(2) to situations where the IRS determines the multiple revocations represent an effort to delay or obstruct the administrative proceeding.

While there may be benign reasons for multiple revocations, the practical effect is the same regardless of the reason. The IRS's receipt of multiple revocations and designations will delay the administrative proceeding and prevent the IRS from effectively conducting an administrative proceeding. The administrative proceeding should not be delayed, intentionally or unintentionally, due to an inability to settle on a partnership representative.

Additionally, requiring the IRS to determine if multiple revocations were due to inadvertence or a desire to delay or obstruct the administrative proceeding adds additional burden that would be costly for both the partnership and the IRS to resolve. It would also inevitably lead to disputes between the IRS and partnerships regarding factually intensive questions underlying the intent of revocations. Any time and resources devoted to discerning the purpose behind each revocation ultimately delays the entire administrative proceeding. There may be situations in which partners genuinely disagree as to who had authority to appoint the partnership representative or who the partnership representative should be. However, these disputes are best resolved by the partners themselves. The IRS should not be the arbiter of disputes between partners. Consequently, this comment has not been adopted.

There may be circumstances, however, when multiple revocations are necessary due to circumstances outside of the partnership's control, such as death or serious health issues or due to a ministerial error. To accommodate these types of circumstances, the proposed regulations provided the IRS with the discretion to keep the partnership designation in effect even though multiple revocations were received within a 90-day period. The proposed regulations did not require the IRS to make a determination that the designation is no longer in effect, but rather provided the IRS with the ability to make such a determination when appropriate. In retaining this rule, the final regulations accommodate situations where multiple revocations are not the result of bad faith and the IRS determines that allowing such revocations does not interfere with the IRS's ability to conduct the administrative proceeding.

Section 301.6223–1(f)(5) of the proposed regulations provided that the multiple-revocation rule was triggered if the IRS receives more than one revocation for the same partnership taxable year within a 90-day period. The final regulations remove the language ''signed by different partners'' from that provision. The fact that multiple revocations are received within 90 days is all that is required for the IRS to exercise its discretion under § 301.6223–1(f)(2). The number of partners involved is not relevant to whether multiple revocations are received and whether that could slow down the administrative proceeding. Accordingly, the regulations have been revised to make clear that the receipt of multiple revocations, not the receipt of multiple revocations signed by different partners, is what is required for the provision in § 301.6223–1(f) to be satisfied.

In addition, the rule in the proposed regulations allowing the partnership the option to appoint a partnership representative before one is designated by the IRS has been revised in the case of multiple revocations. The final regulations provide that if the IRS determines a designation is not in effect in the case of multiple revocations, the IRS will designate a partnership representative, and unlike the general rule for IRS designation of a partnership representative, the partnership will not be given 30 days to designate a partnership representative. The stricter rule in the case of multiple revocations is necessary because providing the partnership another opportunity to designate a partnership representative would only perpetuate the existing problem and may delay the administrative proceeding. The final regulations also make clear that the multiple revocations rule applies to multiple revocations of a designated individual as well. Although the IRS may designate a new partnership representative in the case of multiple revocations, like any other IRS designation of a partnership representative, the partnership may revoke that partnership representative designation with the consent of the IRS.

In order to clarify the operation of the 90-day period under the multiple revocation rule, § 301.6223–1(e)(7) was revised to provide that if the IRS receives a revocation (the current revocation), and, within the 90-day period prior to receiving the current revocation, the IRS had received another revocation for the same partnership taxable year, the IRS may determine that a designation is not in effect. This change clarifies that the multiple revocation rule may apply to any revocation received by the IRS. When the IRS receives a revocation, the IRS

may look back to the preceding 90 days and determine whether it had received a prior revocation for the same taxable year. If it had, the multiple revocation rule applies.

A time limitation for the IRS to notify the partnership that the designation is not in effect was also added to the multiple revocation rule in § 301.6223–1(e)(7)(ii). That time limitation provides that if the IRS plans to determine a designation is not in effect due to receipt of multiple revocations, the IRS must do so within 90 days of the receipt of the current revocation the IRS is considering. For example, assume the partnership files two revocations with respect to the same taxable year—one on May 31, 2019 and one on August 25, 2019. With respect to the August 25th revocation, the IRS received the May 31st revocation within the 90-day period prior to August 25, 2019, meaning the multiple revocation rule under § 301.6223–1(e)(7)(i) applies. Under the time limitation provided in § 301.6223–1(e)(7)(ii), the IRS would then have 90 days from August 25, 2019 to determine a designation is not in effect. If, during that 90-day period starting with August 25, 2019, the IRS received another revocation, the multiple revocation rule under § 301.6223–1(e)(7)(i) would again be triggered, and pursuant to § 301.6223–1(e)(7)(ii), the IRS would have another 90 days from that additional revocation to determine a designation is not in effect. The time limitation under § 301.6223–1(e)(7)(ii) provides certainty for the partnership and the IRS regarding when the IRS may determine that a designation is not in effect after multiple revocations have been filed.

Another comment recommended that a partnership that makes a ''technically faulty'' designation and receives notification from the IRS that no designation of a partnership representative is in effect should be given an opportunity to cure that designation before the IRS designates a new partnership representative. Nothing in the regulations prevents the IRS from providing the partnership with an opportunity to cure a defective designation prior to the IRS making its own designation. The IRS will provide additional guidance to its agents regarding designation of a partnership representative, and the IRS intends to generally recommend providing an opportunity to cure a defective designation. The IRS, however, may not allow for such an opportunity in all cases due to time restraints, multiple revocations, or the particular circumstances. Accordingly, this comment was not adopted. However, as the Treasury Department and the IRS develop more experience in this area, additional guidance may be issued.

Proposed § 301.6223–1(f)(2) has also been amended to add a new paragraph (vii), which provides that the IRS may determine that a designation is not in effect for any other reason described in published guidance. This paragraph was added to allow flexibility to add other circumstances that may require the IRS to determine the designation is not in effect as the Treasury Department and the IRS gain more experience with the centralized partnership audit regime.

The final regulations also provide that the IRS is under no obligation to search for information about whether any of the circumstances listed in § 301.6223–1(f)(2) exists. In addition, the final regulations clarify that even if the IRS has knowledge that one of the circumstances listed in § 301.6223–1(f)(2) exists, the IRS is not required to determine that a designation is not in effect. This clarification was added for the reasons stated above in this section of the preamble. For instance, partners may have filed multiple revocations within 90 days, but if there was a valid reason for the multiple revocations, the IRS may not need to determine the partnership representative designation is not in effect.

ii. IRS Designation

Numerous comments recommended changes to the rules under proposed § 301.6223–1(f) governing IRS designation of a partnership representative when no designation is in effect. Several comments recommended that the regulations impose restrictions on whom the IRS may designate to serve as the partnership representative. Two comments suggested prohibiting the IRS from designating an IRS employee, agent, or contractor as the partnership representative. The Treasury Department and the IRS agree that an IRS employee, agent, or contractor who has no affiliation with the partnership subject to an administrative proceeding should not be designated as the partnership representative. An IRS employee, agent, or contractor may be a partner in the partnership subject to an administrative proceeding, however. Provided this interest in the partnership is unrelated to the individual's affiliation with the IRS, the individual's affiliation with the IRS should not preclude designation as the partnership representative. Accordingly, § 301.6223–1(f)(5) was revised to provide that the IRS may not designate an IRS employee, agent, or contractor as the partnership representative unless the individual is a partner in the partnership subject to an administrative proceeding. Even if the IRS employee, agent, or contractor is a partner in such partnership, however, the IRS intends to avoid designating such an individual as the partnership representative if another suitable person is available.

Several comments recommended that the IRS be required to select a current partner to serve as the partnership representative. Another comment recommended that the IRS be required to select the partner with the largest profits interest. Another comment requested that the regulations include an ordering rule (that is, the IRS selects a partner first; if no partner is available, an employee, etc.). Another comment recommended that where the partnership is in bankruptcy, the IRS should select the trustee to serve as the partnership representative.

Imposing regulatory restrictions on whom the IRS can designate as the partnership representative could adversely affect the IRS's ability to select a suitable partnership representative, which harms both the IRS and the partnership. In some cases, a current partner might be the appropriate selection. In other cases, a former partner or an employee of the partnership might be more appropriate. For example, a current year partner might be more appropriate in a case where the current year partner is the person with access to the books and records of the partnership. However, a former partner has the advantage of being a partner from the year subject to an administrative proceeding and may be able to communicate with reviewed year partners more efficiently when seeking to modify the imputed underpayment. In the context of a partnership in bankruptcy, a non-member manager of the partnership, more familiar with the partnership's day-to-day business might be a more appropriate partnership representative than the bankruptcy trustee hired during the administrative proceeding. The Treasury Department and the IRS do not yet have experience with the new centralized partnership audit regime. As such, it would be unwise at this time to restrict whom the IRS may designate to be the partnership representative (other than as described earlier in this section). Consequently, comments recommending these types of restrictions were not adopted.

One comment asked that the final regulations clarify that the IRS may select an entity partnership representative and that if it does so, the IRS must provide the partnership with the contact information of the designated individual. This comment

was adopted. Therefore, if the IRS does designate an entity to be the partnership representative, the IRS will also appoint a designated individual and provide the contact information of the designated individual to the partnership. See § 301.6223–1(f)(5)(i).

Proposed § 301.6223–1(f)(5)(ii) provides a list of factors the IRS ''may'' consider when designating a partnership representative. A comment suggested that proposed § 301.6223–1(f)(5)(ii) be revised to provide that the IRS ''will ordinarily'' consider ''one or more'' of those factors. The IRS intends to consider these factors when designating a partnership representative. Because the suggested language ''will ordinarily'' more accurately reflects the IRS's intent this comment has been adopted. However, the final regulations have also been revised to clarify that the IRS is not obligated to search for information about the factors to be considered and that IRS knowledge of any of the factors does not obligate the IRS to select a particular person as partnership representative. This clarification is particularly important in the case of a partnership that is nonresponsive because the IRS may not be able to consider certain factors where the partners are unreachable and certain information is not readily attainable. The IRS, therefore, will ordinarily consider these factors, but the IRS may not consider the factors in every case.

The final regulations have also been revised to clarify that these factors are not the equivalent of requirements for eligibility to be designated by the IRS as a partnership representative. Only one factor may be applicable to the person designated as partnership representative and yet that person may be the one who is appropriate to designate based on who is available and willing to serve and the unique facts and circumstances of the partnership, the administrative proceeding, or other issues. Accordingly, § 301.6223–1(f)(5)(ii) has been revised to clarify that the IRS will ordinarily consider one or more of the factors when determining whom to designate as partnership representative, no single factor is determinative, and a person may be designated by the IRS as partnership representative even if none of the factors is applicable.

Several comments requested changes to the factors listed in proposed § 301.6223–1(f)(5)(ii). One comment recommended that the IRS generally consider the profits interests of the partners. Considering the profits interest of a partner is reasonable because profits interest can in some circumstances directly affect how the results of an administrative proceeding will affect an individual partner. Additionally, because profits interest is a factor that can be determined from the face of the partnership return for most partnerships, consideration of a partner's profits interest when designating a partnership representative is administrable for the IRS. Therefore, § 301.6223–1(f)(5)(ii) has been revised to adopt this comment.

One comment suggested that the IRS should consider the person's involvement in the partnership's business in determining whether to designate that person as the partnership representative. The regulations already contain factors that consider the person's overall knowledge of the partnership and its books and records. These factors already incorporate consideration of the person's involvement in the partnership's business. Because the proposed factor duplicates those already included, this comment was not adopted.

Several comments made suggestions with respect to the partnership's inability to revoke a partnership representative designation made by the IRS without having IRS consent of that revocation. One comment disagreed in general with this rule and recommended that the partnership be able to revoke a partnership designation made by the IRS without the consent of the IRS. Another comment stated that the partnership should be involved in the IRS's designation of a partnership representative. Another comment suggested that the partnership should be able to revoke a partnership representative designated by the IRS if there is a bona fide dispute over the capacity of the partnership representative designated by the IRS.

The rule that the partnership must seek the IRS's permission before revoking an IRS-designated partnership representative is premised on the fact that the partnership has not properly designated a partnership representative on its own. If the IRS has to make a designation, the partnership has either failed to designate its own choice for partnership representative or has made multiple revocations.

Allowing the partnership to unilaterally revoke a partnership representative that had been designated by the IRS undermines the purpose of the IRS designation. For an administrative proceeding to function properly and without delay and for the partnership to be represented in that administrative proceeding, a person who can act for the partnership and who is an eligible partnership representative must be designated. Additionally, because the IRS only designates a partnership representative when a partnership has failed to properly make its own designation, the partnership is ultimately in control over whether the IRS will need to designate a partnership representative. Consequently, the final regulations retain the rule that a partnership may revoke a partnership representative designated by the IRS only with the consent of the IRS, and the comments were not adopted.

D. Authority of the Partnership Representative

i. Binding Effect of Actions Taken by the Partnership Representative

One comment suggested that, given that partnerships are formed under state law, state law should control the designation and authority of the partnership representative. Another comment suggested that the final regulations should clarify that the principles of agency law apply to the partnership representative, and that the partnership representative ''will be operating as the agent on behalf of the partnership subject to the same control by the partnership as any principal would have over an agent.'' These comments relate to proposed § 301.6223–2(c), which provided that no state law, partnership agreement, or other document could limit the authority of the partnership representative. Because the authority of the partnership representative under federal law preempts any state law requirements these comments were not adopted. The language of § 301.6223–2(d) (which corresponds with proposed § 301.6223–2(c)) has been revised to clarify that this rule is applicable only with respect to the centralized partnership audit regime. Accordingly, the final regulations provide that the failure to adhere to state law requirements has no effect on actions taken by the partnership representative with respect to the centralized partnership regime.

The regulations are drafted to provide significant flexibility to the partnership to determine who will represent it and for the partnership and the partnership representative to negotiate the terms of their relationship. The Treasury Department and the IRS have attempted to refrain from creating unnecessary regulatory burdens. The partnership and the partnership representative are free to enter into contractual agreements to define the scope and limits of their relationship. However, because the IRS is not a party to these agreements, it is not bound by them. Any remedy the partnership would have against the

partnership representative if the partnership representative failed to act in accordance with those agreements would be under state law with respect to the partnership representative.

Section 301.6223–2(d) is not intended to prevent partnerships from taking advantage of state law remedies for partnerships who wish to restrict a partnership representative's authority under state law. Rather, the regulations leave the enforcement of such restrictions to the relevant parties, which simplifies the administrative proceeding consistent with the design of the centralized partnership audit regime. Under TEFRA, significant resources were often expended by the IRS and the partnership to determine what state law restrictions might affect who could act for the partnership and under what circumstances. The centralized partnership audit regime removes this aspect of TEFRA.

ii. Authority

One comment recommended that where there is a question regarding a person's authority to serve as the partnership representative, the partnership should provide a notice signed by all the partners in the partnership as conclusive evidence that a particular person has the authority to serve as the partnership representative. This comment was not adopted because under section 6223 the authority of a person to act as partnership representative is based on whether the person was properly designated as the partnership representative in accordance with section 6223 and the regulations, not on whether state law or notice from the partners confirms such authority.

One comment suggested that clarifying language be added to the end of a sentence in § 301.6223–2(a) providing that a notice of final partnership adjustment is final when not contested by the partnership representative ''on behalf of the partnership.'' The Treasury Department and the IRS agree that as drafted § 301.6223–2(a) was confusing. It is the partnership that contests the notice of final partnership adjustment, even if it does so through the partnership representative. Accordingly, the final regulations clarify this language by revising § 301.6223–2(a) to remove the reference to the partnership representative.

E. Other Comments and Changes

A comment recommended that proposed § 301.6223–2 be clarified to provide that a partnership representative may engage a person to act on behalf of the partnership representative under a power of attorney during the administrative proceeding (referred to as a ''POA'') and that the POA can participate in meetings or receive copies of correspondence. Nothing in the regulations prevents the partnership representative from engaging a POA for this purpose. Language has been added to § 301.6223–2(d) to clarify this issue. Language has also been added to § 301.6223–1(a) to clarify that appointment of a POA does not designate the POA as partnership representative.

A new paragraph (c) has been added to the final regulations to address the effect of withdrawal of a NAP on actions taken by a partnership representative. Proposed § 301.6231–1(f) (December 19 NPRM) allows the IRS to withdraw a NAP after it has been issued. Proposed § 301.6231–1(f) further provides that the withdrawn NAP has no effect for purposes of the centralized partnership audit regime.

The partnership representative may have taken actions before withdrawal of the NAP. In addition, after the NAP has been issued, but before the NAP has been withdrawn, the partnership representative may have changed. Section 301.6223–2(c) has been added to the final regulations to clarify that even though the withdrawn NAP has no effect, any actions taken by a partnership representative (or successor partnership representative after a change in partnership representative that occurred after the issuance of the NAP and before the NAP was withdrawn) are binding on the partnership, even though the NAP has been withdrawn. An example was also added to illustrate this clarification under § 301.6223–2(c) regarding withdrawal of the NAP. See § 301.6223–2(e), Example 6. As a result of this new paragraph (c), proposed § 301.6223–2(c) was moved to § 301.6223–2(d).

One comment suggested that a partnership representative should have to affirm that he or she will serve as the partnership representative by checking a box on the partnership return where the designation is made. The comment suggested that having such an affirmation will save time at the beginning of the administrative proceeding.

Adopting this comment would not save time at the beginning of the administrative proceeding because even if the box was checked by the partnership representative at the time the return is filed, by the time the IRS commences the administrative proceeding, the partnership representative may no longer be available or willing to serve. Similarly, a partnership representative might erroneously not check the box at the time the return is filed but be willing to serve at the time the administrative proceeding commences. Whether the partnership representative checked the box at one point in time is not the right proxy for whether the partnership representative is willing to serve as the partnership representative at some other point in time. Rather than add this unnecessary requirement, the regulations provide that the person designated as the partnership representative is the partnership representative until there is a resignation, revocation, or the IRS determines no designation is in effect. Once the administrative proceeding begins, an unwilling partnership representative may resign or the partnership may revoke the partnership representative and designate a successor. Accordingly, this comment was not adopted.

One comment suggested that the partnership representative be required to notify partners of significant developments (for example, extensions of the period of limitations, settlements, petitioning a court, etc.). There is no requirement in the statute for the partnership representative to notify any partner of significant developments. This is a departure from TEFRA, which required certain notifications and provided participation rights for certain partners. The proposed regulations adhered to the legislative judgment that the partnership representative is the sole representative of the partnership, and the actions of the partnership representative bind the partners. Nothing in the proposed regulations prevents the partnership from contracting with the partnership representative to require the partnership representative to notify the partnership or the partners of any developments, significant or otherwise.

The Treasury Department and the IRS have determined that the government should not mandate how and when the partnership representative communicates with partners or other persons. By remaining silent on this issue, the regulations allow a partnership, its partners, and the partnership representative to arrange their own affairs without unnecessary regulatory requirements that interfere with these relationships. Accordingly, this comment was not adopted.

Proposed § 1.6223–1(a) provided that a partnership representative must update the partnership representative's contact information when such information changes as required by

forms, instructions, and other guidance prescribed by the IRS. One comment requested that a partnership representative only be required to update its contact information upon the selection of the partnership for an examination or the filing of an AAR. At this time, there is no requirement that the partnership representative update contact information prior to selection for examination or the filing of an AAR. Experience with the new regime may inform the Treasury Department and the IRS that updating contact information prior to selection for an examination or filing an AAR is helpful or important. The final regulations have been clarified to provide that contact information must be updated if required by forms, instructions, or other guidance published by the IRS.

*2. Election Into Centralized Partnership Audit Regime*

The Treasury Department and the IRS received no comments with respect to proposed § 301.9100–22 and made no substantive revisions to the proposed regulations. Accordingly, the final regulations adopt the proposed regulations without any substantive change. Minor editorial changes were made. The temporary regulations are removed.

**Special Analyses**

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Therefore, a regulatory impact assessment is not required.

It is hereby certified that these rules will not have a significant economic impact on a substantial number of small entities. Although these rules may affect a substantial number of small entities, the economic impact is not substantial because these rules merely provide clarifying guidance on the statutory requirements to designate a partnership representative. These rules reduce the existing burden on partnerships to comply with the statutory requirements by providing clear rules and guidance regarding the statutory requirements for partnerships required to designate a partnership representative under section 6223 and for partnerships to make an election for the centralized partnership audit regime to apply to taxable years beginning after November 2, 2015 and before January 1, 2018. For the reasons stated, the final rules will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

**Statement of Availability of IRS Documents**

IRS Revenue Procedures, Revenue Rulings, Notices and other guidance cited in this preamble 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 *www.irs.gov.*

**Drafting Information**

The principal authors of these final regulations are Joy E. Gerdy Zogby of the Office of the Associate Chief Counsel (Procedure and Administration) and Jennifer M. Black of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.6223–1 is added to read as follows:

### § 301.6223–1 Partnership representative.

(a) *Each partnership must have a partnership representative.* A partnership subject to subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) for a partnership taxable year must designate a partnership representative for the partnership taxable year in accordance with this section. There may be only one designated partnership representative for a partnership taxable year at any time. The designation of a partnership representative for a partnership taxable year under this section remains in effect until the date on which the designation of the partnership representative is terminated by valid resignation (as described in paragraph (d) of this section), valid revocation (as described in paragraph (e) of this section), or a determination by the Internal Revenue Service (IRS) that the designation is not in effect (as described in paragraph (f) of this section). A designation of a partnership representative for a partnership taxable year under paragraphs (e) or (f) of this section supersedes all prior designations of a partnership representative for that year. If required by forms, instructions, and other guidance prescribed by the IRS, a partnership representative must update the partnership representative's contact information when such information changes. Only a person designated as a partnership representative in accordance with this section will be recognized as the partnership representative under section 6223. A power of attorney (including a Form 2848, Power of Attorney) may not be used to designate a partnership representative. See § 301.6223–2(a), (b), and (c) with regard to the binding effect of actions taken by the partnership representative. See § 301.6223–2(d) with regard to the sole authority of the partnership representative to act on behalf of the partnership. See paragraph (f) of this section for rules regarding designation of a partnership representative by the IRS.

(b) *Eligibility to serve as a partnership representative*—(1) *In general.* Any person (as defined in section 7701(a)(1)) that meets the requirements of paragraphs (b)(2) and (3) of this section, as applicable, is eligible to serve as a partnership representative, including a wholly owned entity disregarded as separate from its owner for federal tax purposes. A person designated under this section as partnership representative is deemed to be eligible to serve as the partnership representative unless and until the IRS determines that the person is ineligible. A partnership can designate itself as its own partnership representative provided it meets the requirements of paragraphs (b)(2) and (3) of this section.

(2) *Substantial presence in the United States.* A person must have substantial presence in the United States to be the partnership representative. A person has substantial presence in the United States for the purposes of this section if—

(i) The person makes themselves available to meet in person with the IRS in the United States at a reasonable time and place as determined by the IRS in accordance with § 301.7605–1; and

(ii) The person has a United States taxpayer identification number, a street address that is in the United States and a telephone number with a United States area code.

(3) *Eligibility of an entity to be a partnership representative*—(i) *In general.* A person who is not an individual may be a partnership representative only if an individual who meets the requirements of paragraph (b)(2) of this section is appointed by the partnership as the sole individual through whom the partnership representative will act for all purposes under subchapter C of chapter 63. A partnership representative meeting the requirements of this paragraph (b)(3) is an *entity partnership representative,* and the individual through whom such entity partnership representative acts is the *designated individual.* Designated individual status automatically terminates on the date that the designation of the entity partnership representative for which the designated individual was appointed is no longer in effect in accordance with paragraph (d), (e), or (f) of this section.

(ii) *Appointment of a designated individual.* A designated individual must be appointed by the partnership at the time of the designation of the entity partnership representative in the manner prescribed by the IRS in forms, instructions, and other guidance. Accordingly, if the entity partnership representative is designated on the partnership return for the taxable year in accordance with paragraph (c)(2) of this section, the designated individual must be appointed by the partnership at that time. Similarly, if the entity partnership representative is designated under paragraph (e) of this section (regarding revocation and subsequent designation after revocation of a partnership representative), the designated individual must be appointed at that time. If the partnership fails to appoint a designated individual at the time and in the manner set forth in this paragraph (b)(3)(ii), the IRS may determine that the entity partnership representative designation is not in effect under paragraph (f) of this section.

(4) *Examples.* The following examples illustrate the rules of this paragraph (b).

*Example 1.* Partnership designates PR as its partnership representative for its 2018 tax year on its timely filed 2018 partnership return. The IRS initiates an administrative proceeding with respect to Partnership's 2018 tax year. PR has a United States taxpayer identification number, a United States street address, and a phone number with a United States area code. The IRS contacts PR and requests an in-person meeting with respect to the administrative proceeding. PR works with the IRS and agrees to meet. PR has substantial presence in the United States because she meets all the requirements under paragraph (b)(2) of this section.

*Example 2.* The facts are the same as in *Example 1* of this paragraph (b)(4), except that PR is an entity and Partnership appointed DI, a designated individual to act on behalf of PR for its 2018 tax year on its timely filed 2018 partnership return. DI has a United States taxpayer identification number and a phone number with a United States area code. However, the address provided for DI is not a United States address. Accordingly, PR is not an eligible partnership representative because PR is an entity and DI does not satisfy the requirements of paragraph (b)(3)(i) of this section. Although DI does not have substantial presence in the United States under paragraph (b)(2) of this section and therefore PR is not an eligible partnership representative, until there is a resignation or revocation under paragraph (d) or (e) of this section or until the IRS determines the partnership representative designation is no longer in effect under paragraph (f) of this section, the designation of PR as the partnership representative remains in effect in accordance with paragraph (a) of this section, and Partnership and all its partners are bound by the actions of PR as the partnership representative.

*Example 3.* The facts are the same as in *Example 1* of this paragraph (b)(4), except PR works in a foreign country and spends the majority of her time there. Unless PR otherwise fails to meet one of the requirements under paragraph (b)(2) of this section, PR has substantial presence in the United States. However, even if PR fails to meet one of the requirements under paragraph (b)(2) of this section, until there is a resignation or revocation under paragraph (d) or (e) of this section or until the IRS determines the partnership representative designation is no longer in effect under paragraph (f) of this section, the designation of PR as the partnership representative remains in effect in accordance with paragraph (a) of this section, and Partnership and all its partners are bound by the actions of PR as the partnership representative.

(c) *Designation of partnership representative by the partnership*—(1) *In general.* The partnership must designate a partnership representative separately for each taxable year. The designation of a partnership representative for one taxable year is effective only for the taxable year for which it is made.

(2) *Designation.* Except in the case of a designation of a partnership representative (and the appointment of the designated individual, if applicable) after an event described in paragraph (d) of this section (regarding resignation), paragraph (e) of this section (regarding revocation by the partnership), or paragraph (f) of this section (regarding designation made by the IRS), or except as prescribed in forms, instructions, and other guidance, designation of a partnership representative (and the appointment of the designated individual, if applicable) must be made on the partnership return for the partnership taxable year to which the designation relates and must include all of the information required by forms, instructions, and other guidance, including information about the designated individual if paragraph (b)(3) of this section applies. The designation of the partnership representative (and the appointment of the designated individual, if applicable) is effective on the date that the partnership return is filed.

(3) *Example.* The following example illustrates the rules of this paragraph (c).

*Example.* Partnership properly designates PR1 as its partnership representative for taxable year 2018 on its 2018 partnership return. Partnership designates PR2 as its partnership representative for taxable year 2021 on its 2021 partnership return. In 2022, the IRS mails Partnership a notice of administrative proceeding under section 6231(a)(1) with respect to Partnership's 2018 taxable year. PR1 is the partnership representative for the 2018 partnership taxable year, notwithstanding the designation of PR2 as partnership representative for the 2021 partnership taxable year.

(d) *Resignations*—(1) *In general.* A partnership representative or designated individual may resign as partnership representative or designated individual, as applicable, for a partnership taxable year for any reason by notifying the IRS in writing of the resignation in accordance with forms, instructions, and other guidance prescribed by the IRS. A resigning partnership representative may not designate a successor partnership representative. A resigning designated individual may not designate a successor designated individual or partnership representative. No later than 30 days after the IRS receives a written notification of resignation, the IRS will send written confirmation of receipt of the written notification to the partnership and the resigning partnership representative (to the attention of the designated individual if appropriate). A failure by the IRS to send any notification under this paragraph (d) does not invalidate a valid resignation made pursuant to this paragraph (d). A failure by the partnership representative (or designated individual, if the designated individual is the person resigning) to

satisfy the requirements of this paragraph (d) is treated as if there were no resignation, and the partnership representative designation (and designated individual appointment, if applicable) remains in effect until the designation (or appointment) is terminated by valid resignation (as described in this paragraph (d)), valid revocation by the partnership (as described in paragraph (e) of this section), or a determination by the IRS that the designation is not in effect (as described in paragraph (f) of this section). See § 301.6223–2 for binding nature of actions taken by the partnership representative or designated individual on behalf of a partnership representative, if applicable, prior to resignation.

(2) *Time for resignation.* A partnership representative or designated individual may submit the written notification of resignation described in paragraph (d)(1) of this section to the IRS only after the IRS issues a notice of administrative proceeding (NAP) under section 6231(a)(1) for the partnership taxable year for which the partnership representative designation is in effect or at such other time as prescribed by the IRS in forms, instructions, or other guidance. If the IRS withdraws the NAP pursuant to § 301.6231–1(f), any valid resignation by the partnership representative or designated individual under this paragraph (d) prior to the withdrawal of the NAP remains in effect.

(3) *Effective date of resignation.* A valid resignation is immediately effective upon the IRS's receipt of the written notification described in paragraph (d)(1) of this section. As of the effective date of the resignation—

(i) The resigning partnership representative (and designated individual, if applicable) may not take any action on behalf of the partnership with respect to the partnership taxable year affected by the resignation;

(ii) The partnership representative designation is no longer in effect with respect to the partnership taxable year affected by the resignation;

(iii) In the case of a resigning entity partnership representative, the appointment of the designated individual is no longer in effect with respect to the partnership taxable year affected by the resignation; and

(iv) In the case of a resigning designated individual, the designation of the entity partnership representative is no longer in effect with respect to the partnership taxable year affected by the resignation.

(e) *Revocations*—(1) *In general.* A partnership may revoke a designation of a partnership representative or appointment of a designated individual for a partnership taxable year for any reason by notifying the IRS in writing of the revocation in accordance with forms, instructions, and other guidance prescribed by the IRS. The partnership may make such revocation regardless of when and how the designation or appointment was made, except as provided in paragraph (e)(6) of this section (regarding designation by the IRS). The revocation must include the designation of a successor partnership representative (and the appointment of a designated individual, if applicable). In the case of a revocation of only the designated individual appointment, the partnership must designate a successor designated individual. No later than 30 days after the IRS receives a written notification of revocation submitted at the time described in paragraph (e)(2) of this section, the IRS will send written confirmation of receipt of the written notification to the partnership, the revoked partnership representative or, in the case of a revocation of only the appointment of a designated individual, to the revoked designated individual, and to the newly designated partnership representative. In the case of a revocation of an entity partnership representative, the notification will be sent to the entity partnership representative, to the attention of the designated individual. A failure by the IRS to send any notification under this paragraph (e) does not invalidate a valid revocation made pursuant to this paragraph (e). A failure by the partnership to satisfy the requirements of this paragraph (e), including failure to designate a successor, is treated as if no revocation has occurred and the partnership representative designation (and designated individual appointment, if applicable) remains in effect until the designation (or appointment) is terminated either by valid resignation (as described in paragraph (d) of this section), valid revocation by the partnership (as described in this paragraph (e)), or determination by the IRS that the designation is not in effect (as described in paragraph (f) of this section). See § 301.6223–2 for binding nature of actions taken by the partnership representative or designated individual on behalf of a partnership representative, if applicable, prior to revocation.

(2) *Time for revocation*—(i) *Revocation during an administrative proceeding.* Except as provided in paragraph (e)(2)(ii) of this section or in forms, instructions, or other guidance prescribed by the IRS, a partnership may revoke a designation of a partnership representative or appointment of a designated individual only after the IRS issues a notice of selection for examination or a NAP under section 6231(a)(1) for the partnership taxable year for which the designation or appointment is in effect. If the IRS withdraws the NAP pursuant to § 301.6231–1(f), any valid revocation of a partnership representative designation or designated individual appointment under this paragraph (e) prior to the withdrawal of the NAP remains in effect.

(ii) *Revocation with an AAR.* The partnership may revoke a designation of a partnership representative or appointment of a designated individual for the taxable year prior to receiving a notice of selection for examination or a NAP by filing a valid administrative adjustment request (AAR) in accordance with section 6227 for a partnership taxable year. A partnership may not use the form prescribed by the IRS for filing an AAR solely for the purpose of revoking a designation of a partnership representative or appointment of a designated individual. See § 301.6227–1 for the rules regarding the time and manner of filing an AAR.

(3) *Effective date of revocation.* Except as described in paragraph (e)(6)(ii) of this section (regarding the effective date of a revocation of a partnership representative designated by the IRS under paragraph (f)(5) of this section), a valid revocation is immediately effective upon the IRS's receipt of the written notification described in paragraph (e)(1) of this section. A revocation of a partnership representative designation and a designation of a new partnership representative (and appointment of a new designated individual, if applicable) is effective on the date the partnership files a valid AAR. Similarly, a revocation of a designated individual appointment and appointment of a new designated individual is effective on the date the partnership files a valid AAR. As of the effective date of the revocation—

(i) The revoked partnership representative (and designated individual, if applicable) may not take any action on behalf of the partnership with respect to the partnership taxable year affected by the revocation;

(ii) The designation of the revoked partnership representative is no longer in effect, and the successor partnership representative designation (and designated individual appointment, if applicable) is in effect with respect to

the partnership taxable year affected by the revocation;

(iii) In the case of a revoked entity partnership representative, the appointment of the designated individual is no longer in effect with respect to the partnership taxable year affected by the revocation; and

(iv) In the case of a revoked designated individual where the designation of the entity partnership representative has not been revoked, the revoked designated individual may not take any action on behalf of the partnership with respect to the partnership taxable year affected by the revocation, the appointment of the revoked designated individual is no longer in effect, and the appointment of the successor designated individual is in effect.

(4) *Partners who may sign revocation.* A revocation under this paragraph (e) must be signed by a person who was a partner at any time during the partnership taxable year to which the revocation relates or as provided in forms, instructions, and other guidance prescribed by the IRS.

(5) *Form of the revocation.* The written notification of revocation described in paragraph (e)(1) of this section must include the items described in this paragraph (e)(5). A notification of revocation described in paragraph (e)(1) of this section that does not include each of the following items is not a valid revocation:

(i) A certification under penalties of perjury that the person signing the notification is a partner described in paragraph (e)(4) of this section authorized by the partnership to revoke the designation of the partnership representative (or appointment of the designated individual, if applicable).

(ii) A statement that the person signing the notification is revoking the designation of the partnership representative (or appointment of the designated individual, if applicable);

(iii) A designation of a successor partnership representative (and appointment of a designated individual, if applicable) in accordance with this section and forms, instructions, and other guidance prescribed by the IRS; and

(iv) In the case of a revocation of an appointment of a designated individual, appointment of a successor designated individual in accordance with this section and forms, instructions, and other guidance prescribed by the IRS.

(6) *Partnership representative designated by the IRS*—(i) *In general.* If a partnership representative is designated (and a designated individual is appointed, if applicable) by the IRS pursuant to paragraph (f)(5) of this section, the partnership may only revoke that designation (or the appointment of the designated individual, if applicable) with the permission of the IRS, which the IRS will not unreasonably withhold.

(ii) *Effective date of revocation.* The effective date of any revocation submitted in accordance with paragraph (e)(6)(i) of this section is the date on which the IRS sends notification that the revocation is valid.

(7) *Multiple revocations*—(i) *In general.* The IRS may determine that a designation is not in effect under paragraph (f) of this section if:

(A) The IRS receives a revocation of a designation of a partnership representative or appointment of a designated individual, and

(B) Within the 90-day period prior to the date the revocation described in paragraph (e)(7)(i)(A) of this section was received, the IRS received another revocation for the same partnership taxable year.

(ii) *Time limitation.* The IRS may not determine that a designation is not in effect in accordance with paragraph (e)(7)(i) of this section later than 90 days after the IRS's receipt of the revocation described in paragraph (e)(7)(i)(A) of this section.

(8) *Examples.* The following examples illustrate the rules of this paragraph (e).

*Example 1.* Partnership properly designates PR, an individual, as partnership representative for its 2018 taxable year on its timely filed 2018 partnership return. In 2020, Partnership mails written notification to the IRS to revoke designation of PR as its partnership representative for Partnership's 2018 taxable year. The revocation is not made in connection with an AAR for Partnership's 2018 taxable year, and the IRS has not mailed Partnership a notice of selection for examination or a NAP under section 6231(a)(1) with respect to Partnership's 2018 taxable year. Because the revocation was not made when permitted under paragraph (e)(2) of this section, the revocation is not effective and B remains the partnership representative for Partnership's 2018 taxable year unless and until B's status as partnership representative is properly revoked under paragraph (e) of this section or terminated in accordance with paragraph (d) (regarding resignation) or (f) (regarding IRS designation) of this section.

*Example 2.* During an administrative proceeding with respect to Partnership's 2018 taxable year, Partnership provides the IRS with written notification to revoke its designation of PR, an individual, as its partnership representative for the 2018 taxable year. The written notification does not include a designation of a new partnership representative for Partnership's 2018 taxable year. Because the revocation does not include a designation of a new partnership representative as required under paragraph (e)(1) of this section, the revocation is not effective and PR remains the partnership representative for Partnership's 2018 taxable year unless and until B's status as partnership representative is properly revoked under paragraph (e) of this section or terminated in accordance with paragraph (d) (regarding resignation) or (f) (regarding IRS designation) of this section.

(f) *Designation of the partnership representative by the IRS*—(1) *In general.* If the IRS determines that a designation of a partnership representative is not in effect for a partnership taxable year in accordance with paragraph (f)(2) of this section, the IRS will notify the partnership that a partnership representative designation is not in effect. The IRS will also notify the most recent partnership representative for the partnership taxable year, except as described in paragraph (f)(2)(iii) of this section. In the case of an entity partnership representative, the notification will be sent to the entity partnership representative, to the attention of the designated individual. The determination that a designation is not in effect is effective on the date the IRS mails the notification. Except as described in paragraph (f)(4) of this section, the partnership may designate, in accordance with paragraph (f)(3) of this section, a successor partnership representative (and designated individual, if applicable) eligible under paragraph (b) of this section within 30 days of the date the IRS mails the notification. In the case of a resignation of a partnership representative, this notification may include the written confirmation of receipt described in paragraph (d)(1) of this section. See paragraph (f)(2)(iv) of this section. If the partnership does not designate a successor within 30 days from the date of IRS notification, the IRS will designate a partnership representative in accordance with paragraph (f)(5) of this section. A partnership representative designation made in accordance with paragraphs (c), (e), or (f) of this section remains in effect until the IRS determines the designation is not in effect. See § 301.6223–2 for binding nature of actions taken by the partnership representative or designated individual on behalf of a partnership representative, if applicable, prior to a determination by the IRS that the designation is not in effect.

(2) *IRS determination that partnership representative designation not in effect.* The IRS may, but is not required to, determine that a partnership representative designation is not in effect. The IRS is not obligated to search for or otherwise seek out information

related to the circumstances in which the IRS may determine a partnership representative designation is not in effect, and the fact that the IRS is aware of any such circumstances does not obligate the IRS to determine that a partnership representative designation is not in effect. The IRS may determine that the partnership representative designation is not in effect if the IRS determines that—

(i) The partnership representative or the designated individual does not have substantial presence as described in paragraph (b)(2) of this section;

(ii) The partnership failed to appoint a designated individual as described in paragraph (b)(3) of this section, as applicable;

(iii) The partnership failed to make a valid designation as described in paragraph (c) of this section;

(iv) The partnership representative or designated individual resigns as described in paragraph (d) of this section;

(v) The partnership has made multiple revocations as described in paragraph (e)(7) of this section; or

(vi) The partnership representative designation is no longer in effect as described in other published guidance.

(3) *Designation by the partnership during the 30-day period.* Designation of a partnership representative (and appointment of a designated individual, if applicable) by the partnership during the 30-day period described in paragraph (f)(1) of this section must be made in accordance with forms, instructions, and other guidance prescribed by the IRS. If the partnership fails to provide all information required by forms, instructions, and other guidance, the partnership will have failed to make a designation (and appointment, if applicable). If the partnership does not fully comply with the requirement of this paragraph (f)(3) within the 30-day period described in paragraph (f)(1) of this section, the IRS will designate a partnership representative (and appoint a designated individual, if applicable).

(4) *No opportunity for designation by the partnership in the case of multiple revocations.* In the event that the IRS determines a partnership representative designation is not in effect due to multiple revocations as described in paragraph (e)(7) of this section, the partnership will not be given an opportunity to designate the successor partnership representative prior to the designation by the IRS as described in paragraph (f)(5) of this section. However, see paragraph (e)(6) of this section regarding revocation of a partnership representative designated by the IRS.

(5) *Designation by the IRS*—(i) *In general.* The IRS designates a partnership representative under this paragraph (f)(5) by notifying the partnership of the name, address, and telephone number of the new partnership representative. If the IRS designates an entity partnership representative, the IRS will also appoint a designated individual to act on behalf of the entity partnership representative. The designation of a partnership representative (and appointment of a designated individual, if applicable) by the IRS is effective on the date on which the IRS mails the notification of the designation (and appointment, if applicable) to the partnership. The IRS will also mail a copy of the notification of the designation (and appointment, if applicable) to the new partnership representative (through the new designated individual, if applicable) that has been designated (and appointed, if applicable) by the IRS under this section.

(ii) *Factors considered when partnership representative designated by the IRS.* The IRS will ordinarily consider one or more of the factors set forth in this paragraph (f)(5)(ii) when determining whom to designate as partnership representative. No single factor is determinative, and other than as described in paragraph (f)(5)(iii) of this section, the IRS may exercise its discretion to designate a person as partnership representative even if none of the factors are applicable to such person. The factors are not requirements for eligibility to be designated by the IRS as partnership representative; the only requirements for eligibility are described under paragraph (b) of this section. The IRS is not obligated to search for or otherwise seek out information related to the factors, and the fact that the IRS is aware of any information related to such factors does not obligate the IRS to designate a particular person. Although the IRS may designate any person to be the partnership representative, a principal consideration in determining whom to designate as a partnership representative is whether there is a reviewed year partner that is eligible to serve as the partnership representative in accordance with paragraph (b)(1) of this section or whether there is a partner at the time the partnership representative designation is made that is eligible to serve as the partnership representative. Other factors that will ordinarily be considered by the IRS in determining whom to designate as a partnership representative include, but are not limited to:

(A) The views of the partners having a majority interest in the partnership regarding the designation;

(B) The general knowledge of the person in tax matters and the administrative operation of the partnership;

(C) The person's access to the books and records of the partnership;

(D) Whether the person is a United States person (within the meaning of section 7701(a)(30)); and

(E) The profits interest of the partner in the case of a partner.

(iii) *IRS employees.* The IRS will not designate a current employee, agent, or contractor of the IRS as the partnership representative unless that employee, agent, or contractor was a reviewed year partner or is currently a partner in the partnership.

(6) *Examples.* The following examples illustrate the rules of this paragraph (f).

*Example 1.* The IRS determines that Partnership has designated a partnership representative that does not have substantial presence in the United States as defined in paragraph (b)(2) of this section. The IRS may, but is not required to, determine that the designation is not in effect and designate a new partnership representative after following the procedures in this paragraph (f).

*Example 2.* Partnership designates as its partnership representative a corporation but fails to appoint a designated individual to act on behalf of the corporation as required under paragraph (b)(3) of this section. The IRS may, but is not required to, determine that the partnership representative designation is not in effect and may designate a new partnership representative after following the procedures in this paragraph (f).

*Example 3.* The partnership representative resigns pursuant to paragraph (d) of this section. The IRS mails Partnership a notification informing Partnership that no designation is in effect and that the IRS plans to designate a new partnership representative. Partnership fails to respond within 30 days of the date the IRS mails the notification. The IRS must designate a partnership representative pursuant to this paragraph (f).

*Example 4.* Partnership designated on its partnership return a partnership representative, PR1. After Partnership received a NAP, Partnership submits to the IRS the form described in paragraph (e)(4) of this section requesting the revocation of PR1's designation as partnership representative and designating PR2 as the partnership representative. Sixty days later, Partnership signs and submits a form described in paragraph (e)(4) of this section requesting the revocation of PR2's designation as partnership representative and designating PR3 as the partnership representative. The IRS accepts the revocation of PR2 and designation of PR3 as

valid and effective upon receipt pursuant to paragraph (e)(3) of this section. However, because PR2's revocation was within 90 days of PR1's revocation, the IRS may determine within 90 days of IRS's receipt of PR2's revocation, pursuant to paragraphs (e)(7) and (f)(2) of this section, that there is no designation in effect due to multiple revocations. The IRS may then designate a new partnership representative pursuant to this paragraph (f) without allowing Partnership an opportunity to designate a partnership representative within the 30-day period described in paragraph (f)(1) of this section.

(g) *Reliance on forms required by this section.* The IRS may rely on any form or other document filed or submitted under this section as evidence of the designation, resignation, or revocation on such form and as evidence of the date on which such form was filed or submitted relating to a designation, resignation, or revocation.

(h) *Applicability date*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable years beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 3.** Section 301.6223–2 is added to read as follows:

**§ 301.6223–2 Binding effect of actions of the partnership and partnership representative.**

(a) *Binding nature of actions by partnership and final decision in a partnership proceeding.* The actions of the partnership and the partnership representative taken under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) and any final decision in a proceeding brought under subchapter C of chapter 63 with respect to the partnership bind the partnership, all partners of the partnership (including partnership-partners as defined in § 301.6241–1(a)(7) that have a valid election under section 6221(b) in effect for any taxable year that ends with or within the taxable year of the partnership), and any other person whose tax liability is determined in whole or in part by taking into account directly or indirectly adjustments determined under subchapter C of chapter 63 (for example, indirect partners as defined in § 301.6241–1(a)(4)). For instance, a settlement agreement entered into by the partnership representative on behalf of the partnership, a notice of final partnership adjustment (FPA) with respect to the partnership that is not contested by the partnership, or the final decision of a court with respect to the partnership if the FPA is contested, binds all persons described in the preceding sentence.

(b) *Actions by the partnership representative before termination of designation.* A termination of the designation of a partnership representative because of a resignation under § 301.6223–1(d) or a revocation under § 301.6223–1(e), or as a result of a determination by the Internal Revenue Service (IRS) under § 301.6223–1(f) that the designation is not in effect, does not affect the validity of any action taken by that partnership representative during the period prior to such termination. For example, if a partnership representative properly designated under § 301.6223–1 consented to an extension of the period of limitations on making adjustments under section 6235(b) in accordance with § 301.6235–1(d), that extension remains valid even after termination of the designation of that partnership representative.

(c) *Actions by the partnership representative upon withdrawal of notice of administrative proceeding.* If the IRS issues a notice of administrative proceeding (NAP) under section 6231(a)(1) and subsequently withdraws such NAP pursuant to § 301.6231–1(f), any actions taken by a partnership representative (or successor partnership representative after a change to the partnership representative that occurred after the issuance of the NAP and before the NAP was withdrawn) are binding as described in paragraph (a) of this section even though the NAP has been withdrawn and has no effect for purposes of subchapter C of chapter 63.

(d) *Partnership representative has the sole authority to act on behalf of the partnership*—(1) *In general.* The partnership representative has the sole authority to act on behalf of the partnership for all purposes under subchapter C of chapter 63. In the case of an entity partnership representative, the designated individual has the sole authority to act on behalf of the partnership representative and the partnership. Except for a partner that is the partnership representative or the designated individual, no partner, or any other person, may participate in an administrative proceeding without the permission of the IRS. The failure of the partnership representative to follow any state law, partnership agreement, or other document or agreement has no effect on the authority of the partnership representative or the designated individual as described in section 6223, § 301.6223–1, and this section. Nothing in this section affects, or otherwise restricts, the ability of a partnership representative to authorize a person to represent the partnership representative, in the partnership representative's capacity as the partnership representative, before the IRS under a valid power of attorney in a proceeding involving the partnership under subchapter C of chapter 63.

(2) *Designation provides authority to bind the partnership*—(i) *Partnership representative.* A partnership representative, by virtue of being designated under section 6223 and § 301.6223–1, has the authority to bind the partnership for all purposes under subchapter C of chapter 63.

(ii) *Designated individual.* A partnership that is required to appoint a designated individual described under § 301.6223–1(b)(3)(i) acts through such designated individual. By virtue of being appointed as part of the designation of the partnership representative under § 301.6223–1, the designated individual has the sole authority to bind the partnership representative and therefore the partnership, its partners, and any other person as described in paragraph (a) of this section for all purposes under subchapter C of chapter 63 so long as the partnership representative designation and designated individual appointment are in effect.

(e) *Examples.* The following examples illustrate the rules of this section.

*Example 1.* Partnership designates a partnership representative, PR, on its timely filed partnership return for 2020. PR is a partner in Partnership. The partnership agreement for Partnership includes a clause that requires PR to consult with an identified management group of partners in Partnership before taking any action with respect to an administrative proceeding before the IRS. The IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year. During the course of the administrative proceeding, PR consents to an extension of the period of limitations on making adjustments under section 6235(b) allowing additional time for the IRS to mail an FPA. PR failed to consult with the management group of partners prior to agreeing to this extension of time. PR's consent provided to the IRS to extend the time period is valid and binding on Partnership because, pursuant to section 6223, PR, as the designated partnership representative, has authority to bind Partnership and all its partners.

*Example 2.* Partnership designates a partnership representative, PR, on its timely filed partnership return for 2020. PR is not a partner in Partnership. During an administrative proceeding with respect to Partnership's 2020 taxable year, PR agrees to certain partnership adjustments and within 45 days after the issuance of the FPA elects the alternative to payment of the imputed

underpayment under section 6226. Certain partners in Partnership challenge the actions taken by PR during the administrative proceeding and the validity of the section 6226 statements furnished to those partners, alleging that PR was never authorized to act on behalf of Partnership under state law or the partnership agreement. Because PR was designated by Partnership as the partnership representative under section 6223 and this section, PR was authorized to act on behalf of Partnership for all purposes under subchapter C of chapter 63, and the IRS may rely on that designation as conclusive evidence of PR's authority to act on behalf of Partnership.

*Example 3.* Partnership designates an entity partnership representative, EPR, and appoints an individual, A, as the designated individual on its timely filed partnership return for 2020. EPR is a C corporation. A is unaffiliated with EPR and is not an officer, director, or employee of EPR. During an administrative proceeding with respect to Partnership's 2020 taxable year, A, acting for EPR, agrees to an extension of the period of limitations on making adjustments under section 6235(b) from March 15, 2024 to December 31, 2024. The IRS mails an FPA with respect to the 2020 partnership taxable year on December 13, 2024, before expiration of the extended period of limitations on making adjustments as agreed to by EPR, but after the expiration of the unextended period of limitations on making adjustments. Partnership challenges the FPA as untimely, alleging that A was not authorized under state law to act on behalf of EPR and thus the extension agreement was invalid. Because A was appointed by the partnership as the designated individual to act on behalf of EPR, A was authorized to act on behalf of EPR for all purposes under subchapter C of chapter 63, and the IRS may rely on that appointment as conclusive evidence of A's authority to act on behalf of EPR and Partnership.

*Example 4.* The partnership representative, PR, consents to an extension of the period of limitations on making adjustments under section 6235(b) and § 301.6235–1(d) for Partnership for the partnership taxable year. After signing the consent, PR resigns as partnership representative in accordance with § 301.6223–1(d). The consent to extend the period of limitations on making adjustments under section 6235(b) remains valid even after PR resigns.

*Example 5.* Partnership designates a partnership representative who does not make themselves available to meet with the IRS in person in the United States as required by § 301.6223–1(b). Although the partnership representative does not have substantial presence in the United States within the meaning of § 301.6223–1(b)(2), until a termination occurs under § 301.6223–1(d) or (e) or the IRS determines the partnership representative designation is no longer in effect under § 301.6223–1(f), the partnership representative designation remains in effect, and Partnership and all its partners are bound by the actions of the partnership representative.

*Example 6.* Partnership designates PR1 as the partnership representative on its timely filed partnership return for 2020. On September 1, 2022, the IRS sends a NAP for the 2020 taxable year to Partnership and PR, and Partnership revokes PR1's designation and designates PR2 as the partnership representative in accordance with § 301.6223–1(e). On November 1, 2023, PR2 consents to an extension of the period of limitations on making adjustments under section 6235(b) and § 301.6235(d) for Partnership's 2020 taxable year. On December 1, 2023, the IRS then withdraws the NAP. PR2 remains the partnership representative, and the consent to extend the period of limitations on making adjustments under section 6235(b) remains valid even after the NAP is withdrawn.

(f) *Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable years beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 4.** Section 301.9100–22 is added to read as follows:

**§ 301.9100–22 Time, form, and manner of making the election under section 1101(g)(4) of the Bipartisan Budget Act of 2015 for returns filed for partnership taxable years beginning after November 2, 2015 and before January 1, 2018.**

(a) *Election.* Pursuant to section 1101(g)(4) of the Bipartisan Budget Act of 2015, Public Law 114–74 (BBA), a partnership may elect at the time and in such form and manner as described in this section for amendments made by section 1101 of the BBA, except section 6221(b) as added by the BBA, to apply to any return of the partnership filed for an eligible taxable year as defined in paragraph (d) of this section. An election is valid only if made in accordance with this section. Once made, an election may only be revoked with the consent of the Internal Revenue Service (IRS). An election is not valid if it frustrates the purposes of section 1101 of the BBA. A partnership may not request an extension of time under § 301.9100–3 for an election described in this section.

(b) *Election on notification by the IRS*—(1) *Time for making the election.* Except as described in paragraph (c) of this section, an election under this section must be made within 30 days of the date of notification to a partnership, in writing, that a return of the partnership for an eligible taxable year has been selected for examination (a notice of selection for examination).

(2) *Form and manner of making the election*—(i) *In general.* The partnership makes an election under this section by providing a written statement with the words ''Election under Section 1101(g)(4)'' written at the top that satisfies the requirements of paragraph (b)(2) of this section to the individual identified in the notice of selection for examination as the IRS contact regarding the examination.

(ii) *Statement requirements.* A statement making an election under this section must be in writing and be dated and signed by the tax matters partner, as defined under section 6231(a)(7) (prior to amendment by the BBA), and the applicable regulations, or an individual who has the authority to sign the partnership return for the taxable year under section 6063, the regulations thereunder, and applicable forms and instructions. The fact that an individual dates and signs the statement making the election described in this paragraph (b) shall be prima facie evidence that the individual is authorized to make the election on behalf of the partnership. A statement making an election must include—

(A) The partnership's name, taxpayer identification number, and the partnership taxable year for which the election described in this paragraph (b) is being made;

(B) The name, taxpayer identification number, address, and daytime telephone number of the individual who signs the statement;

(C) Language indicating that the partnership is electing application of section 1101(c) of the BBA for the partnership return for the eligible taxable year identified in the notice of selection for examination;

(D) The information required to properly designate the partnership representative as defined by section 6223 as amended by the BBA, which must include the name, taxpayer identification number, address, and daytime telephone number of the partnership representative and any additional information required by applicable regulations, forms and instructions, and other guidance issued by the IRS;

(E) The following representations—

(*1*) The partnership is not insolvent and does not reasonably anticipate becoming insolvent before resolution of any adjustment with respect to the partnership taxable year for which the election described in this paragraph (b) is being made;

(*2*) The partnership has not filed, and does not reasonably anticipate filing, voluntarily a petition for relief under title 11 of the United States Code;

(*3*) The partnership is not subject to, and does not reasonably anticipate

becoming subject to, an involuntary petition for relief under title 11 of the United States Code; and

(*4*) The partnership has sufficient assets, and reasonably anticipates having sufficient assets, to pay a potential imputed underpayment with respect to the partnership taxable year that may be determined under subchapter C of chapter 63 of the Internal Revenue Code as amended by the BBA; and

(F) A representation, signed under penalties of perjury, that the individual signing the statement is duly authorized to make the election described in this paragraph (b) and that, to the best of the individual's knowledge and belief, all of the information contained in the statement is true, correct, and complete.

(iii) *Notice of Administrative Proceeding.* Upon receipt of the election described in this paragraph (b), the IRS will promptly mail a notice of administrative proceeding to the partnership and the partnership representative, as required under section 6231(a)(1) as amended by the BBA. Notwithstanding the preceding sentence, the IRS will not mail the notice of administrative proceeding before the date that is 30 days after receipt of the election described in paragraph (b) of this section.

(c) *Election for the purpose of filing an administrative adjustment request (AAR) under section 6227 as amended by the BBA*—(1) *In general.* A partnership that has not been issued a notice of selection for examination as described in paragraph (b)(1) of this section may make an election with respect to a partnership return for an eligible taxable year for the purpose of filing an AAR under section 6227 as amended by the BBA. Once an election under this paragraph (c) is made, all of the amendments made by section 1101 of the BBA, except section 6221(b) as added by the BBA, apply with respect to the partnership taxable year for which such election is made.

(2) *Time for making the election.* No election under this paragraph (c) may be made before January 1, 2018.

(3) *Form and manner of making an election.* An election under this paragraph (c) must be made in the manner prescribed by the IRS for that purpose in accordance with applicable regulations, forms and instructions, and other guidance issued by the IRS.

(4) *Effect of filing an AAR before January 1, 2018.* Except in the case of an election made in accordance with paragraph (b) of this section, an AAR filed on behalf of a partnership before January 1, 2018, is deemed for purposes of paragraph (d)(2) of this section, to be an AAR filed under section 6227(c) (prior to amendment by the BBA) or an amended return of partnership income, as applicable.

(d) *Eligible taxable year*—(1) *In general.* For purposes of this section, the term *eligible taxable year* means any partnership taxable year beginning after November 2, 2015 and before January 1, 2018, except as provided in paragraph (d)(2) of this section.

(2) *Exception if AAR or amended return filed or deemed filed.* Notwithstanding paragraph (d)(1) of this section, a partnership taxable year is not an eligible taxable year for purposes of this section if for the partnership taxable year—

(i) The tax matters partner has filed an AAR under section 6227(c) (prior to amendment by the BBA),

(ii) The partnership is deemed to have filed an AAR under section 6227(c) (prior to the amendment by the BBA) in accordance with paragraph (c)(4) of this section, or

(iii) An amended return of partnership income has been filed or has been deemed to be filed under paragraph (c)(4) of this section.

(e) *Applicability date.* These regulations are applicable to returns filed for partnership taxable years beginning after November 2, 2015 and before January 1, 2018.

**§ 301.9100–22T [Removed]**

■ **Par. 5.** Section 301.9100–22T is removed.

**Kirsten Wielobob,**

*Deputy Commissioner for Services and Enforcement.*

Approved: July 20, 2018.

**David J. Kautter,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2018–17002 Filed 8–6–18; 4:15 pm]

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

**[Docket ID OSHA–H005C–2006–0870]**

**RIN 1218–AD19**

### Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Final rule.

**SUMMARY:** With this final rule, OSHA is extending the compliance date for certain ancillary requirements of the general industry beryllium standard to December 12, 2018. This standard protects workers from the hazards of beryllium exposure. OSHA has determined that this final rule will maintain essential safety and health protections for workers while OSHA prepares a Notice of Proposed Rulemaking (NPRM) to clarify specific provisions of the beryllium standard in accordance with a settlement agreement entered into with stakeholders. The December 12, 2018, compliance date affects only certain ancillary provisions, *i.e.,* methods of compliance, beryllium work areas, regulated areas, personal protective clothing and equipment, hygiene areas and practices, housekeeping, communication of hazards, and recordkeeping.

**DATES:** This rule is effective August 9, 2018.

**ADDRESSES:** For purposes of 28 U.S.C. 2112(a), OSHA designates Edmund Baird, Acting Associate Solicitor of Labor for Occupational Safety and Health, to receive petitions for review of the final rule. Contact the Acting Associate Solicitor at the Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–5445.

### Citation Method

In the docket for the beryllium rulemaking, found at *http://www.regulations.gov,* every submission was assigned a document identification (ID) number that consists of the docket number (OSHA–H005C–2006–0870) followed by an additional four-digit number. For example, the document ID number for OSHA's Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis is OSHA–H005C–2006–0870–0426. Some document ID numbers include one or more attachments, such as the National Institute for Occupational Safety and Health (NIOSH) prehearing submission (see Document ID OSHA–H005C–2006–0870–1671).

When citing exhibits in the docket, OSHA includes the term ''Document ID'' followed by the last four digits of the document ID number, the attachment number or other attachment identifier, if applicable, and page numbers (designated ''p.'' or ''Tr.'' for pages from a hearing transcript). In a citation that contains two or more document ID numbers, the document ID numbers are separated by semicolons.

**FOR FURTHER INFORMATION CONTACT:**

*Press inquiries:* Mr. Frank Meilinger, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

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*Copies of this* ***Federal Register*** *document and news releases:* Electronic copies of these documents are available at OSHA's web page at *https://www.osha.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Explanation of Regulatory Action

### *A. Introduction*

This final rule extends the compliance date to December 12, 2018, for certain ancillary provisions of the beryllium rule for general industry, specifically provisions related to methods of compliance, beryllium work areas, regulated areas, personal protective clothing and equipment, hygiene areas and practices, housekeeping, communication of hazards, and recordkeeping. This rule does not affect the new permissible exposure limits (PELs) for general industry, construction, and shipyards or the general industry provisions for exposure assessment, respiratory protection, medical surveillance, and medical removal, which OSHA began enforcing on May 11, 2018. This final rule also does not affect the March 11, 2019, compliance date for the provisions on change rooms and showers in paragraph (i) (hygiene areas and practices) or the March 10, 2020, compliance date for implementation of the engineering controls required by paragraph (f) (methods of compliance). Finally, this rule does not affect the applicability of paragraph (a) (scope and application) or paragraph (b) (definitions). (Document ID 2156). OSHA has determined that this final rule will maintain essential safety and health protections for workers while OSHA prepares a Notice of Proposed Rulemaking (NPRM) to clarify specific provisions of the beryllium standard in accordance with a settlement agreement entered into with stakeholders. The revisions that OSHA plans to propose are designed to enhance worker protections by ensuring that the rule is well-understood and compliance is simple and straightforward.

### *B. Summary of Economic Impact*

OSHA has determined that this final rule is not economically significant. The rule revises 29 CFR 1910.1024(o)(2) to extend the deadline for compliance with certain provisions of the general industry beryllium standard until December 12, 2018. OSHA's final economic analysis shows that this compliance date extension will result in a net cost savings for the affected industries. At a 3 percent discount rate over 10 years, the extension will result in net annual cost savings of $0.76 million per year; at a discount rate of 7 percent over 10 years, the net annual cost savings is $1.73 million per year. When the Department uses a perpetual time horizon, the annualized cost savings of the final rule is $1.65 million with a 7 percent discount rate. The detailed final economic analysis, which includes more information on OSHA's cost/cost savings estimates for this final rule, can be found in the ''Agency Determinations'' section of this preamble. The rule is also an Executive Order (E.O.) 13771 deregulatory action.

### *C. Regulatory Background*

OSHA published a Notice of Proposed Rulemaking (NPRM) for occupational exposure to beryllium in the **Federal Register** on August 7, 2015. (80 FR 47566). In the NPRM, the agency made a preliminary determination that employees exposed to beryllium and beryllium compounds at the previous PEL faced a significant risk to their health and that promulgating the NPRM's proposed standard would substantially reduce that risk. The NPRM invited interested stakeholders to submit comments on a variety of issues.

OSHA held a public hearing in Washington, DC, on March 21 and 22, 2016. The agency heard testimony from a number of organizations, including public health groups, industry representatives, and labor unions. Following the hearing, participants had an opportunity to submit additional evidence and data, as well as final briefs, arguments, and summations (Document ID 1756, Tr. 326).

On January 9, 2017, after considering the entire record, OSHA issued a final rule with separate standards for general industry, shipyards, and construction, in order to tailor requirements to the circumstances found in these sectors. See 82 FR 2470. The general industry standard became effective on March 10, 2017, and the compliance date for most of the standard's provisions was March 12, 2018. However, on March 2, 2018, OSHA issued a memorandum stating that no provisions of the general industry standard would be enforced until May 11, 2018.[1] Two subsequent enforcement delays followed—the first, on May 9, 2018, delayed enforcement until June 25, 2018, of some of the general industry standard's ancillary provisions (related to methods of compliance, beryllium work areas, regulated areas, personal protective clothing and equipment, hygiene areas and practices, housekeeping, communication of hazards, and recordkeeping). The second delay, on June 21, 2018, postponed enforcement of those provisions until August 9, 2018.

Following promulgation of the final rule in January 2017, several general industry employers, including Materion Corporation (''Materion''), challenged the rule in federal court. As part of a settlement agreement with Materion,[2] OSHA is planning to propose revisions to certain provisions in the general industry standard and to rely on its de minimis policy while the rulemaking is pending so that employers may comply with the proposed revisions to the standard without risk of a citation.[3] The revisions OSHA plans to propose under the settlement agreement are generally designed to clarify the standard in response to stakeholder questions or to simplify compliance, while in all cases maintaining a high degree of protection from the adverse health effects of beryllium exposure (Document ID 2156).

### *D. Summary of Public Comments and Explanation of Final Action*

On June 1, 2018, OSHA published a proposed rule to extend the compliance

[1] On May 7, 2018, OSHA published a Direct Final Rule (DFR) which became effective July 6, 2018. (83 FR 19936; 83 FR 31045). The DFR clarified the definitions of ''beryllium work area,'' ''emergency,'' ''dermal contact,'' and ''beryllium contamination.'' It also clarified OSHA's intent with respect to provisions for disposal and recycling of materials that contain or are contaminated with beryllium, and with respect to provisions that the agency intends to apply only where skin can be exposed to materials containing at least 0.1 percent beryllium by weight.

[2] The Materion settlement agreement can be viewed on *regulations.gov* (Document ID 2156): *https://www.regulations.gov/document?D=OSHA-H005C-2006-0870-2156.*

[3] The OSH Act allows the Secretary of Labor to prescribe procedures for issuing notices instead of citations for ''de minimis violations'' that have no direct or immediate relationship to safety or health. 29 U.S.C. 658(a). OSHA's de minimis policy is set forth in its Field Operations Manual, available at *https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-160.pdf.* OSHA considers it a de minimis condition when an employer ''complies with a proposed OSHA standard or amendment or a consensus standard rather than with the standard in effect at the time of the inspection and the employer's action clearly provides equal or greater employee protection.'' De minimis conditions do not result in citations or penalties. See 29 CFR 1903.15(c) (''Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.''); See Employer Rights and Responsibilities Following a Federal OSHA Inspection, *https://www.osha.gov/Publications/osha3000.pdf.*

date to December 12, 2018 for certain ancillary requirements of the general industry beryllium standard. (83 FR 25536). OSHA explained that the proposed extension would give the agency time to prepare and publish a planned NPRM to amend the general industry standard before employers would be required to comply with certain ancillary provisions affected by that NPRM. That in turn would allow employers to comply with the proposed provisions without risk of a citation until any such changes are finalized (Document ID 2156).

In the proposal, OSHA requested comments from the public on both the duration and scope of the proposed compliance date extension (83 FR 25539). OSHA asked commenters to include a rationale for any concerns they had with the proposal, as well as for any alternatives they suggested. OSHA also requested comments on the ''Agency Determinations'' section of the proposal, including the preliminary economic analysis and other regulatory effects on employers and workers.

OSHA received ten comments in response to the proposal (Document IDs 2159–2168). The comments generally focused on three issues arising from the proposed extension: (1) Whether to extend the compliance date, (2) the scope of any extension, and (3) the appropriate duration of any extension. Below we examine these three issues, in that order—by summarizing the comments and then explaining the agency's determinations based on the record as a whole. We then address two miscellaneous comments.

1. Extension of the Compliance Date for Certain Ancillary Provisions in the General Industry Standard

Five commenters supported the agency's proposed extension of the compliance date for ancillary provisions affected by OSHA's forthcoming, substantive NPRM. (See Document ID 2161; 2165–2168). For example, Century Aluminum Company stated that ''the affected portions of the Standard should be delayed to allow OSHA time to prepare and publish the substantive proposed rule so that employers do not take unnecessary and costly measures.'' (Document ID 2165, p.1). It added that the proposed delay would also limit confusion among employers and other stakeholders. (Document ID 2165, p.1). Materion similarly observed that the proposed extension would address the concern that beginning enforcement of provisions affected by the NPRM could result in employer confusion or improper implementation of the relevant provisions of the rule. (Document ID 2161, p.2). Airborn Inc., Mead Metals, Inc., and the National Association of Manufacturers (NAM) supported Materion's comments and registered their own support for the extension. (Document ID 2166, p.1; 2167, p.1; 2168, pp.1–2). These three stakeholders agreed that an extension is ''necessary to give OSHA enough time to draft and publish'' the forthcoming, substantive NPRM. (Document ID 2166, p.1; 2167, p.1; 2168, p.1). NAM added that the proposed extension was ''another positive step toward a more effective general industry standard for the benefit of workers.'' (Document ID 2168, p.2). NAM also expressed its appreciation for ''OSHA's recognition of employers' reasonable and practical concerns regarding compliance in anticipation of [the forthcoming, substantive NPRM].'' (Document ID 2168, p.2).

Four other commenters, the United Steelworkers (USW), Public Citizen, UNITE HERE! International Union (UNITE HERE), and the National Employment Law Project (NELP), opposed the proposed extension. (Document ID 2160; 2162–2164). These commenters argued that the extension would be unnecessary and unjustified, and would delay the implementation of important protections for workers. (See, *e.g.,* Document ID 2160, pp. 1–2). For example, Public Citizen maintained that ''[e]xpeditious implementation of the ancillary provisions in general industry is absolutely necessary to enhance the benefits of the newly adopted PEL, ultimately providing another level of protection in occupational settings.'' (Document ID 2162, p.3). It argued that delaying implementation would allow employers to continue to expose workers to unsafe levels of beryllium, ensuring ''the occurrence of even more cases of beryllium sensitization, chronic beryllium disease, . . . . lung cancer,'' and other adverse health effects. (Document ID 2162, p.3).

OSHA understands Public Citizen's concerns; the agency's goal is to protect the health and safety of workers. That is why OSHA has narrowly tailored the scope of the compliance date extension to cover only provisions that will be affected by the forthcoming, substantive NPRM. OSHA is enforcing, and will continue to enforce, many of the provisions that provide critical protection to general industry employees. This final rule does not affect critical worker protections afforded by enforcement of the revised lower PEL, the new short-term exposure limit (STEL), and requirements for exposure assessment, respiratory protection, medical surveillance, and medical removal.

Moreover, in adopting this final rule, OSHA recognizes that the goal of worker protection can be frustrated where employers do not clearly understand OSHA's requirements or how to implement them. OSHA appreciates the concerns of those stakeholders who note that, until OSHA releases its planned NPRM, employers may lack clarity regarding how to implement and comply with the beryllium standard. OSHA has determined that it would be undesirable, for both the agency and those it regulates, to begin enforcement of certain ancillary provisions of the standard that will likely be affected by the upcoming rulemaking—a scenario that could result in employers taking unnecessary measures to comply with provisions to which OSHA intends to propose clarifications.

NELP and Public Citizen also asserted that the proposed compliance-date extension conflicted with OSHA's finding that a comprehensive standard is needed to protect workers exposed to beryllium. (Document ID 2162; 2163). OSHA disagrees with that assertion that this extension is in conflict with OSHA's findings. OSHA believes that a comprehensive standard is critically important for the protection of workers exposed to beryllium in general industry settings. However, the benefits of a comprehensive standard may not be fully realized where employers do not clearly understand, and have trouble implementing, its requirements. OSHA finds that this limited, short-term extension of the compliance date for certain ancillary requirements of the standard will give the agency the time necessary to ensure that employers have clear direction on how to protect workers exposed to beryllium. Additionally, as noted previously, OSHA will continue to maintain essential safety and health protections for workers through ongoing enforcement of many of the beryllium standard's key provisions. Enforcement of other OSHA standards, such as the Hazard Communication Standard (29 CFR 1910.1200) and Access to Employee Exposure and Medical Records (29 CFR 1910.1020) will also provide other important protections for workers in general industry. In particular, employers are, and will remain, obligated to label hazardous chemicals containing beryllium, ensure that safety data sheets are readily available, and train workers on the hazards of beryllium in accordance with the Hazard Communication Standard. OSHA encourages employers to review their hazard communication programs,

employee training, and other hazard communication practices (such as workplace labeling) to ensure continued compliance with the Hazard Communication Standard.

USW and UNITE HERE also questioned OSHA's justification for the proposed extension of compliance dates. USW objected to OSHA's preliminary determination that beginning enforcement of the ancillary provisions identified in the proposal before publication of the substantive NPRM could result in employer confusion or improper implementation of the relevant provisions of the rule. (Document ID 2160, p.2). USW argued that employers could avoid confusion by complying with the revisions that are identified in the settlement agreement. (Document ID 2160, p.2). In addition, USW and UNITE HERE claimed that OSHA proposed this extension to ''demonstrate that it has taken deregulatory action.'' (Document ID 2160, p.2; 2164).

OSHA does not agree with the USW that this extension of compliance dates is unnecessary because employers can rely on the regulatory revisions identified in the settlement agreement before publication of the substantive NPRM. The settlement agreement contains only a redlined version of the relevant regulatory text. It does not include a full summary and explanation of the revisions, in which OSHA explains the meaning of the proposed revisions to the regulatory text and, in some cases, provides further information and examples to aid compliance. For example, OSHA is planning to propose changes to paragraph (j)(3), to address reuse of beryllium-containing materials in addition to disposal and recycling, because in some cases materials may be directly reused without being recycled. In the summary and explanation for the proposed rule, OSHA will explain the intended meaning of the term ''reuse'' and the circumstances under which the cleaning and bagging requirements included in paragraph (j)(3) would apply to the reuse of materials that contain beryllium.

OSHA also disagrees with USW and UNITE HERE's characterization of the rationale for this extension. Although OSHA noted in the proposal that the proposed extension was ''expected to be an . . . E.O.[ ] 13771 deregulatory action,'' it included that statement to carry out its obligations under E.O. 13771, not to justify the rulemaking. As stated above, the reason for this rulemaking is to provide OSHA sufficient time to promulgate proposed clarifications to the general industry standard, so that employers can easily understand and properly implement the standard in order to keep workers healthy and safe.

Based on the record as a whole, OSHA finds the arguments in favor of the proposed extension of compliance dates to be more persuasive than those against the proposal. Therefore, the agency has decided to adopt the proposed extension of compliance dates to allow time for the preparation and publication of the planned, substantive NPRM.

2. Scope of the Extension

Having determined that an extension of the compliance date for certain ancillary provisions in the beryllium standard for general industry is appropriate, OSHA next addresses comments regarding which provisions will be included in the extension. In the NPRM, OSHA proposed extending the compliance date for the following provisions: Beryllium work areas and regulated areas (paragraph (e)), written exposure control plans (paragraph (f)(1)), personal protective clothing and equipment (paragraph (h)), hygiene areas and practices (paragraph (i) except for change rooms and showers), housekeeping (paragraph (j)), communication of hazards (paragraph (m)), and recordkeeping (paragraph (n)). OSHA requested comments on the proposed scope of the extension.

Several commenters objected to the scope of the proposed compliance-date extension. For example, USW asserted that the underlying settlement agreement only ''affects beryllium products whose content is less [than] 1% by weight, but which does not generate exposures above the PEL.'' (Document ID 2160, p. 1). Therefore, USW argued, ''[t]here is no basis for staying ancillary provisions of the standard in workplaces where exposures to beryllium are above the PEL.'' (Document ID 2160, pp. 1–2). UNITE HERE also asserted that the proposed extension of compliance dates should be limited to provisions that OSHA intends to change. (Document ID 2164). It further argued that ''there is no justification to delay any provision of the standard to the extent that it would regulate exposures above the PEL.'' (Document ID 2164). NELP similarly commented that the proposal was ''broad and needlessly pushes back compliance dates of important worker protections to a highly toxic substance.'' (Document ID 2163, p.1).

Century Aluminum, however, argued that OSHA should not extend the compliance date for only certain portions of affected paragraphs, as proposed by some of the other commenters. Beyond making it clear that the compliance dates for engineering and work practice controls (March 10, 2020) and change rooms and showers (March 11, 2019) remain unchanged, Century Aluminum asserted that differentiating by portions of affected paragraphs would lead to substantial confusion among employers and other stakeholders.[4]

OSHA agrees with Century Aluminum's assessment that an extension of compliance dates that differentiated between individual subparagraphs of the affected ancillary provisions, as suggested by USW and UNITE HERE, would create substantial confusion.[5] In addition, OSHA does not find that the extension should be limited to only those situations where beryllium exposures do not exceed the PEL. Contrary to USW's assertion, the substantive changes OSHA intends to propose to the beryllium standard for general industry *do* apply to processes that generate exposures above the PEL, and they are not limited to products whose beryllium content is less than one percent by weight. For example, changes to provisions for methods of compliance, personal protective clothing and equipment, housekeeping, and hygiene areas and practices involve *all* beryllium-containing materials where exposures may occur. Therefore,

[4] Materion commented that the proposed extension of compliance dates did not cover all of the provisions that could be affected by the forthcoming, substantive NPRM. (Document ID 2161, p.1). Specifically, Materion noted that the NPRM could also affect the requirements for medical surveillance and change rooms. (Document ID 2161, p.1 (citing Document ID 2156, Appendix B)). However, Materion did not ask OSHA to make any changes to the scope of the extension based on its comment. Rather, its comment appeared to serve as a recommendation to other employers to ''take careful note of the proposed changes identified in the settlement agreement, and to take them into account when implementing their compliance programs for medical surveillance and change rooms.'' (Document ID 2161, p.1). OSHA notes that, until the NPRM is published, employers may comply with the medical surveillance provisions as clarified by the definitions of ''CBD diagnostic center,'' ''chronic beryllium disease,'' and ''confirmed positive'' that OSHA has agreed to propose, which are available in the docket (Document ID 2156) and in OSHA's interim enforcement guidance (*https://www.osha.gov/laws-regs/standardinterpretations/2018-05-09*).

[5] OSHA recognizes that three paragraphs, *i.e.,* the paragraphs related to change rooms and showers in paragraph (i) and the requirement in paragraph (f)(2) for the implementation for engineering controls, have different compliance dates than those set for other paragraphs in paragraphs (i) and (f). However, this is a function of the way the compliance date provisions were structured in the January 9, 2017, final rule, and those dates were set based on specific findings made by the agency in that rulemaking. The agency believes employers have had ample notice of when the agency intends to begin enforcement of these particular provisions.

OSHA's rationale for the extension of compliance dates applies to all general industry workplaces within the scope of the beryllium standard, including those where beryllium exposures may exceed the PEL. Finally, as to UNITE HERE's comment that the extension should be limited to provisions that OSHA intends to change in the final standard, OSHA has reexamined each of the provisions covered by the proposed extension and confirmed that the final extension of compliance dates applies only to paragraphs affected by the upcoming, substantive NPRM.

After considering these comments, OSHA has decided to retain the scope of the extension as proposed. The extension of compliance dates, therefore, will apply to the following provisions: Beryllium work areas and regulated areas (paragraph (e)), written exposure control plans (paragraph (f)(1)), personal protective clothing and equipment (paragraph (h)), hygiene areas and practices (paragraph (i) except for change rooms and showers), housekeeping (paragraph (j)), communication of hazards (paragraph (m)), and recordkeeping (paragraph (n)).

3. Duration of the Extension

Having determined that it is appropriate to extend the compliance date for certain ancillary provisions in the general industry beryllium standard, the remaining issue is the duration of the extension. In the NPRM, OSHA proposed extending the relevant compliance date until December 12, 2018. OSHA requested comments on the duration of the extension.

Very few commenters expressly opined on the duration of the proposed compliance date extension, and those who did disagreed as to whether a longer or shorter extension was appropriate. For example, Century Aluminum asked OSHA to consider extending the relevant compliance date for an additional three months, to March 11, 2019. (Document ID 2165, pp. 1–2). It argued that ''[a]n additional three months would give OSHA the time to receive comments on the substantive proposed rule and publish a final rule.'' (Document ID 2165, p.1). It further stated that a longer extension would prevent confusion and unnecessary costs:

> A delay until the substantive rulemaking is completed would also prevent a situation where employers comply with the de minimis policy, only to have to change practices if the final rule does not adopt all of the revisions in the proposed rule. The costs of such a midstream about-face could be significant. Moreover, aligning the compliance date with March 11, 2019, which is the compliance date for the change rooms and showers required by paragraph (i) of the Standard, would simplify compliance efforts and limit confusion among affected entities. Finally, the additional few months would allow state plans time to consider whether to adopt any revisions OSHA makes to the Standard without causing significant disruption in their respective states.

(Document ID 2165, p.2). USW and UNITE HERE, on the other hand, recommended that the proposed extension continue until thirty days after the substantive NPRM is issued or December 12, 2018, whichever comes first. USW maintained that the potentially shorter extension would allow time for employers to conform their practices to the content of the NPRM, while providing workers with necessary protections as soon as possible.

After considering these comments, OSHA is not persuaded that it should alter the duration of the proposed extension. Although OSHA appreciates Century Aluminum's points, the agency must balance arguments in favor of a longer extension against the concerns raised by commenters, such as USW, that an unnecessarily lengthy extension could deny general industry workers certain protections afforded to them under the affected ancillary provisions. Moreover, although OSHA understands Century Aluminum's concern about the potential increase in costs that could result if the provisions adopted as a result of the planned substantive rulemaking do not mirror those proposed in the substantive NPRM, the agency cannot, at this time, estimate with much certainty when any final rule will be promulgated.[6] OSHA also rejects USW and UNITE HERE's call for compliance dates based on the publication of the substantive NPRM; a timeline based on a currently uncertain date would be more difficult and confusing for employers and workers. The agency finds that the proposed compliance date of December 12, 2018, appropriately balances the concerns raised by stakeholders, will provide the agency sufficient time to draft and publish the NPRM, and will give employers sufficient time to comply. Therefore, OSHA has decided to extend the compliance date for the identified provisions until December 12, 2018, as proposed.

[6] Although not suggested by Century Aluminum, OSHA also notes that an indefinite extension of compliance deadlines, *i.e.,* a compliance date determined by the date the substantive rulemaking is completed, is likely to result in greater, not less, confusion.

4. Miscellaneous Comments

OSHA also received two comments that did not directly relate to the proposed extension of compliance dates. The first, from Materion, is related to a statement the agency made in the proposal. (Document ID 2161, p.2). Specifically, OSHA stated that it ''expects to publish the planned, substantive NPRM well in advance of the compliance dates'' for change rooms and showers (March 11, 2019) and engineering controls (March 10, 2020). Materion maintained that ''it is reasonable and necessary for OSHA to not only publish the NPRM, but complete its final changes to the General Industry Standard for beryllium well ahead of March 11, 2019, since the revisions OSHA plans to propose are primarily clarifying or simplifying in nature . . . and designed to enhance worker protections by ensuring that the rule is well-understood and compliance is simple and straightforward.'' (Document ID 2161, p.2 (citing Document ID 2156)). Materion further commented that ''[e]mployees will benefit most by completion of all changes as soon as possible, and certainly before early 2019.'' (Document ID 2161, p.2).

OSHA understands Materion's concern, and agrees that prompt finalization of any substantive revisions to the general industry standard for beryllium would be ideal. Therefore, the agency will proceed with the substantive rulemaking as expeditiously as possible. However, OSHA will also need to ensure that stakeholders have a meaningful opportunity to comment on the forthcoming proposal and that the agency has adequate time to consider and address stakeholder comments. Consequently, at this time the agency does not have a specific target date for conclusion of the substantive rulemaking.

The second comment that was not directly related to the proposed extension of compliance dates was submitted by an anonymous commenter, who indicated strong support for the beryllium rule generally. (Document ID 2159). The commenter submitted summary statistics on relationships between beryllium exposure and the prevalence of beryllium sensitization and chronic beryllium disease in a cohort at a beryllium precision machining facility and stated that the results support the control of workplace beryllium exposures. However, this commenter did not address how the data or conclusions provided related to the proposed extension of compliance dates

or otherwise offer any comments on the specific terms of the proposed extension. To the extent that this commenter intended to argue that the proposed extension of compliance dates would have a detrimental impact on worker health, that comment is addressed above in response to similar concerns expressed by USW, Public Citizen, UNITE HERE, and NELP.

## II. Agency Determinations

### *A. Final Economic Analysis and Regulatory Flexibility Certification*

Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)) require that OSHA estimate the benefits, costs, and net benefits of regulations, and analyze the effects of certain rules that OSHA promulgates. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This final rule is not an ''economically significant regulatory action'' under E.O. 12866 or UMRA, or a ''major rule'' under the Congressional Review Act (5 U.S.C. 801 *et seq.*). Neither the benefits nor the costs of this final rule would exceed $100 million in any given year. This final rule to extend the compliance date for certain ancillary provisions in the beryllium standard would result in cost savings. Cost savings arise in this context because a delay in incurred costs for employers would allow them to invest the funds (and earn an expected return at the going interest rate) that would otherwise have been spent to comply with the beryllium standard. OSHA did not receive any comments on the preliminary economic analysis OSHA prepared for the proposal.

At a discount rate of 3 percent, this final compliance-date extension yields annualized cost savings of $0.76 million per year for 10 years. At a discount rate of 7 percent, this final rule yields an annualized cost savings of $1.73 million per year for 10 years. When the Department uses a perpetual time horizon to allow for cost comparisons under E.O. 13771 (82 FR 9339, Jan. 30, 2017), the annualized cost savings of this final compliance date extension are $1.65 million at a discount rate of 7 percent.

#### 1. Changes to the Baseline: Updating to 2017 Dollars and Removing Familiarization Costs; Discussion of Overhead Costs

More than one year has elapsed since promulgation of the beryllium standards on January 9, 2017, so OSHA has updated the projected costs for general industry contained in the final economic analysis that accompanied the rule from 2015 to 2017 dollars, using the latest Occupational Employment Statistics (OES) wage data (for 2016) and inflating them to 2017 dollars. Additionally, although familiarization costs were included in the cost estimates developed in the 2017 economic analysis, OSHA expects that those costs have already been incurred by affected employers, and is excluding them from its analysis of the cost savings associated with this extension of compliance dates. Thus, baseline costs for this final economic analysis (FEA) are the projected costs from the 2017 economic analysis, updated to 2017 dollars, less familiarization costs.

OSHA notes that it did not include an overhead labor cost in the 2017 analysis, and has not accounted for such costs in this FEA. There is not one broadly accepted overhead rate, and the use of overhead to estimate the marginal costs of labor raises a number of issues that should be addressed before applying overhead costs to analyze the cost implications of any specific regulation. There are several ways to look at the cost elements that fit the definition of overhead, and there is a range of overhead estimates currently used within the federal government—for example, the Environmental Protection Agency has used 17 percent,[7] and government contractors have reportedly used 50 percent for on-site (*i.e.,* company site) overhead.[8] Some overhead costs, such as advertising and marketing, may be more closely correlated with output than with labor. Other overhead costs vary with the number of new employees. For example, rent or payroll processing costs may change little with the addition of 1 employee in a 500-employee firm, but may change substantially with the addition of 100 employees. If an employer is able to rearrange current employees' duties to implement a rule, then the marginal share of overhead costs, such as rent, insurance, and major office equipment (*e.g.,* computers, printers, copiers), would be very difficult to measure with accuracy.

If OSHA had included an overhead rate when estimating the marginal cost of labor, without further analyzing an appropriate quantitative adjustment, and adopted for these purposes an overhead rate of 17 percent on base wages, the cost savings of this final rule would increase to approximately $0.82 million per year, at a discount rate of 3 percent, or to approximately $1.87 million per year, at a discount rate of 7 percent.[9] The addition of 17-percent overhead on base wages would therefore increase cost savings by approximately 8 percent above the primary estimate at either discount rate.

#### 2. Changes to the Standard: Nine-Month Extension of the Compliance Date for Some Ancillary Provisions

The general industry beryllium standard went into effect on May 20, 2017, with most compliance obligations beginning on March 12, 2018. OSHA is finalizing the extension of the compliance date for specific provisions until December 12, 2018. The compliance date for the updated PELs, as well as for the exposure assessment, respiratory protection, medical surveillance, and medical removal requirements, and for provisions for which the standard already establishes compliance dates in 2019 and 2020, do not change as a result of this rule. The applicability of the scope and application paragraph and the definitions also do not change as a result of this rule, except that employers may comply with the definitions of ''CBD diagnostic center,'' ''chronic beryllium disease,'' and ''confirmed positive'' that will be proposed in the later substantive rulemaking NPRM (Document ID 2156). The purpose of this final rule is to provide time for OSHA to issue a planned NPRM that will affect the parts of the standard that are covered by this compliance-date extension before that compliance date is reached, so that OSHA may rely on its de minimis policy and employers may

[7] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002 (document ID 2025). This analysis itself was based on a survey of several large chemical manufacturing plants: Heiden Associates, Final Report: A Study of Industry Compliance Costs Under the Final Comprehensive Assessment Information Rule, Prepared for the Chemical Manufacturers Association, December 14, 1989.

[8] Grant Thornton LLP, *2017 Government Contractor Survey, https://www.grantthornton.com/-/media/content-page-files/public-sector/pdfs/surveys/2018/2017-government-contractor-survey.* According to Grant Thornton's *2017 Government Contractor Survey,* on-site rates are generally higher than off-site rates, because the on-site overhead pool includes the facility-related expenses incurred by the company to house the employee, while no such expenses are incurred or allocated to the labor costs of direct charging personnel who work at the customer site.

[9] OSHA used an overhead rate of 17 percent on base wages in a sensitivity analysis in the final economic analysis (OSHA–2010–0034–4247, p. VII–65) in support of the March 25, 2016, final respirable crystalline silica standards (81 FR 16286) and in the preliminary economic analysis in support of the June 27, 2017, beryllium proposal for the construction and shipyard sectors (82 FR 29201).

comply with the proposed provisions without risk of a citation.

OSHA estimated the cost savings of the final rule relative to baseline costs, where baseline costs reflect the costs of compliance *without* the final rule's changes to the compliance date. OSHA calculated the cost savings by lagging the first-year costs for the affected provisions by nine months and then calculating the present value of the delayed costs over the 10 years following the new compliance date. Annualizing the present value of cost savings over ten years, the result is an annualized cost savings of $0.76 million per year at a discount rate of 3 percent, or $1.73 million per year at a discount rate of 7 percent. When the Department uses a perpetual time horizon to allow for cost comparisons under E.O. 13771, the annualized cost savings of this compliance date extension is $1.65 million at a discount rate of 7 percent.

The undiscounted cost savings by provision and year are presented below in Table 1. As shown in Table 1, and described elsewhere in this final rule, the cost savings described in this FEA reflect savings only for provisions covered by the compliance date extension. OSHA estimated no cost savings for the PELs, exposure assessment, respiratory protection, medical surveillance, or medical removal provisions (as they are not covered by the extension), or for any provisions for which the rule already establishes compliance dates in 2019 (change rooms/showers) or 2020 (engineering controls).[10] The cost savings by year and discount rate are shown below in Table 2.

3. Economic and Technological Feasibility

In the final economic analysis for the 2017 general industry beryllium standard, OSHA concluded that the rule was technologically feasible. OSHA has determined that this final rule is also technologically feasible because it does not change any of the rule's substantive requirements, and, if adopted, would simply give employers more time to comply with some of the rule's ancillary requirements. Furthermore, OSHA previously concluded that the beryllium standard was economically feasible. As this final rule does not impose any new substantive requirements, and results in cost savings, OSHA has concluded that the final rule is also economically feasible.

4. Effects on Benefits

The planned rulemaking to revise the general industry beryllium standard is intended to be responsive to questions and concerns expressed by stakeholders regarding ancillary provisions of the rule. Safety and health programs can be ineffective if employers and other stakeholders are unclear about OSHA requirements. Hence, by addressing stakeholder questions and concerns, the planned rulemaking will make it more likely that the regulated community will realize the full benefits of the rule, as estimated in the 2017 final economic analysis. Although it is not possible to quantify the effect of stakeholder uncertainty on the projected benefits of the rule, OSHA believes that the short-term loss of benefits associated with this extension of initial compliance dates will be more than offset in the long term by the benefits resulting from the agency's effort to clarify the rule. OSHA has determined that this final rule will maintain essential safety and health protections for workers.

5. Certification of No Significant Impact on a Substantial Number of Small Entities

This final rule will result in cost savings for affected employers, and those savings fall below levels that could be said to have a significant positive economic impact on a substantial number of small entities.[11] Therefore, OSHA certifies that this final rule does not have a significant impact on a substantial number of small entities.

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[10] Note that the labor costs associated with time spent changing clothes are generally triggered by wearing personal protective equipment, as required by paragraph (h) of the beryllium standard. OSHA is extending the compliance date for paragraph (h). Thus, employers will not incur the labor costs associated with changing time for personal protective equipment until December 12, 2018, so OSHA is generally accounting for those cost savings in this FEA. OSHA has not accounted for any cost savings related to the use of head covers, however. Head covers may be used to prevent contamination of employees' hair, potentially precluding the need for showers under paragraph (i)(3) of the standard. Because this final rule does not extend the compliance date for showers, OSHA has not accounted for head covers for purposes of estimating the cost savings associated with this final rule.

[11] OSHA investigated whether the projected cost savings would exceed 1 percent of revenues or 5 percent of profits for small entities and very small entities for every industry. To determine if this was the case, OSHA returned to its original regulatory flexibility analysis (2017) for small entities and very small entities. OSHA found that the cost savings of this final rule are such a small percentage of revenues and profits for every affected industry that OSHA's criteria would not be exceeded for any industry.

Table 1: Undiscounted Compliance Costs by Year and Provision (2017 Dollars)

| Year | Engineering Controls and Work Practices | Respirator Costs | Rule Familiarization | Exposure Assessment | Regulated Areas | Beryllium Work Areas | Medical Surveillance | Medical Removal Provision | Written Exposure Control Plan | Protective Work Clothing & Equipment | Hygiene Areas and Practices - Change Rooms | Hygiene Areas and Practices - Changing Labor Time | Hygiene Areas and Practices - Head Coverings | Housekeeping | Training | Total | Delayed Cost Total | Not Delayed Cost Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | *Not Delayed* | *Not Delayed* | *Not Delayed* | *Not Delayed* | *Delayed* | *Delayed* | *Not Delayed* | *Not Delayed* | *Delayed* | *Delayed* | *Not Delayed* | *Delayed* | *Not Delayed* | *Delayed* | *Delayed* | | | |
| 1 | $48,363,092 | $372,038 | $0 | $18,903,655 | $686,423 | $1,148,798 | $16,810,498 | $3,288,986 | $2,772,426 | $1,893,890 | $761,953 | $207,268 | $12,211 | $37,615,726 | $9,536,539 | $142,373,503 | $53,861,070 | $88,512,433 |
| 2 | $7,899,637 | $252,372 | $0 | $6,540,784 | $642,631 | $0 | $2,289,059 | $256,541 | $1,890,613 | $1,893,890 | $677,245 | $207,268 | $12,211 | $19,744,717 | $7,586,746 | $49,893,714 | $31,965,865 | $17,927,849 |
| 3 | $8,021,023 | $264,285 | $0 | $6,540,784 | $642,631 | $0 | $7,108,201 | $256,541 | $1,890,613 | $1,893,890 | $677,245 | $207,268 | $12,211 | $19,744,717 | $7,586,746 | $54,846,155 | $31,965,865 | $22,880,290 |
| 4 | $7,899,637 | $306,608 | $0 | $6,540,784 | $642,631 | $0 | $3,239,801 | $256,541 | $1,890,613 | $1,893,890 | $677,245 | $207,268 | $12,211 | $19,744,717 | $7,586,746 | $50,898,692 | $31,965,865 | $18,932,827 |
| 5 | $8,021,023 | $264,285 | $0 | $6,540,784 | $642,631 | $0 | $6,401,799 | $256,541 | $1,890,613 | $1,893,890 | $677,245 | $207,268 | $12,211 | $19,744,717 | $7,586,746 | $54,139,754 | $31,965,865 | $22,173,889 |
| 6 | $7,899,637 | $252,372 | $0 | $6,540,784 | $642,631 | $0 | $3,764,658 | $256,541 | $1,890,613 | $1,893,890 | $677,245 | $207,268 | $12,211 | $19,744,717 | $7,586,746 | $51,369,312 | $31,965,865 | $19,403,447 |
| 7 | $8,021,023 | $318,521 | $0 | $6,540,784 | $642,631 | $0 | $6,011,831 | $256,541 | $1,890,613 | $1,893,890 | $677,245 | $207,268 | $12,211 | $19,744,717 | $7,586,746 | $53,804,021 | $31,965,865 | $21,838,156 |
| 8 | $7,899,637 | $252,372 | $0 | $6,540,784 | $642,631 | $0 | $4,054,404 | $256,541 | $1,890,613 | $1,893,890 | $677,245 | $207,268 | $12,211 | $19,744,717 | $7,586,746 | $51,659,059 | $31,965,865 | $19,693,194 |
| 9 | $8,021,023 | $264,285 | $0 | $6,540,784 | $642,631 | $0 | $5,796,549 | $256,541 | $1,890,613 | $1,893,890 | $677,245 | $207,268 | $12,211 | $19,744,717 | $7,586,746 | $53,534,504 | $31,965,865 | $21,568,639 |
| 10 | $7,899,637 | $306,608 | $0 | $6,540,784 | $642,631 | $0 | $4,214,358 | $256,541 | $1,890,613 | $1,893,890 | $677,245 | $207,268 | $12,211 | $19,744,717 | $7,586,746 | $51,873,249 | $31,965,865 | $19,907,384 |

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TABLE 2—COST SAVINGS DUE TO COMPLIANCE DATE EXTENSION

| Year | *t* | Undiscounted costs by year | Discounted costs—3% | Discounted costs—7% |
|---|---|---|---|---|
| **Baseline** | | | | |
| 1 | 1.00 | $53,861,070 | $52,292,301 | $50,337,449 |
| 2 | 2.00 | 31,965,865 | 30,130,893 | 27,920,224 |
| 3 | 3.00 | 31,965,865 | 29,253,295 | 26,093,668 |
| 4 | 4.00 | 31,965,865 | 28,401,257 | 24,386,605 |
| 5 | 5.00 | 31,965,865 | 27,574,036 | 22,791,220 |
| 6 | 6.00 | 31,965,865 | 26,770,909 | 21,300,205 |
| 7 | 7.00 | 31,965,865 | 25,991,173 | 19,906,734 |
| 8 | 8.00 | 31,965,865 | 25,234,149 | 18,604,424 |
| 9 | 9.00 | 31,965,865 | 24,499,174 | 17,387,312 |
| 10 | 10.00 | 31,965,865 | 23,785,605 | 16,249,825 |
| Total | | | 293,932,792 | 244,977,667 |
| Annualized—10 Years | | | 34,457,890 | 34,879,308 |
| **Discounting Option 1** | | | | |
| 1 | 1.75 | 53,861,070 | 51,145,783 | 47,846,852 |
| 2 | 2.75 | 31,965,865 | 29,470,268 | 26,538,787 |
| 3 | 3.75 | 31,965,865 | 28,611,911 | 24,802,605 |
| 4 | 4.75 | 31,965,865 | 27,778,554 | 23,180,004 |
| 5 | 5.75 | 31,965,865 | 26,969,470 | 21,663,556 |
| 6 | 6.75 | 31,965,865 | 26,183,952 | 20,246,314 |
| 7 | 7.75 | 31,965,865 | 25,421,312 | 18,921,788 |
| 8 | 8.75 | 31,965,865 | 24,680,886 | 17,683,914 |
| 9 | 9.75 | 31,965,865 | 23,962,025 | 16,527,023 |
| 10 | 10.75 | 31,965,865 | 23,264,102 | 15,445,816 |
| Total | | | 287,488,264 | 232,856,658 |
| Annualized—10 Years | | | 33,702,395 | 33,153,550 |
| Difference from Baseline | | | −755,495 | −1,725,759 |

*B. Paperwork Reduction Act*

This final rule does not change the information collections already approved by the Office of Management and Budget (OMB). OMB approved the information collection request for the general industry beryllium standard under OMB Control Number 1218–0267, with an expiration date of April 30, 2020. OSHA received no comments on the information collection request in response to the proposal.

*C. Federalism*

OSHA reviewed this final rule in accordance with the Executive Order on Federalism (E.O. 13132, 64 FR 43255 (Aug. 10, 1999)), which requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. E.O. 13132 provides for preemption of state law only with the expressed consent of Congress. Federal agencies must limit any such preemption to the extent possible.

Under Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*), Congress expressly provides that states and U.S. territories may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to such states and territories as ''State Plan States.'' Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. 29 U.S.C. 667. Subject to these requirements, State Plan States are free to develop and enforce under state law their own requirements for safety and health standards.

OSHA previously concluded from its analysis that promulgation of the beryllium standard complies with E.O. 13132 (82 FR at 2633). In states without an OSHA-approved State Plan, this final rule limits state policy options in the same manner as every standard promulgated by OSHA. For State Plan States, Section 18 of the OSH Act, as noted in the previous paragraph, permits State Plan States to develop and enforce their own beryllium standards provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this final rule.

*D. State Plans*

When Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, State Plans must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, *e.g.,* because an existing state standard covering this area is ''at least as effective'' as the new Federal standard or amendment (29 CFR 1953.5(a)). The state standard must be at least as effective as the final Federal rule. State Plans must adopt the Federal standard or complete their own standard within six months of the promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plans do not have to amend their standards, although OSHA may encourage them to do so. The 21 states and 1 U.S. territory with OSHA-approved occupational safety and health plans covering the private sector and state and local governments are: Alaska,

Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to state and local government employees only.

The new amendments to OSHA's beryllium final rule do not impose any new requirements on employers. Accordingly, State Plans do not have to amend their standards to extend the compliance dates for their beryllium rules, but they may do so within the limits of this final rule.

*E. Unfunded Mandates Reform Act*

When OSHA issued the final rule establishing standards for occupational exposure to beryllium, it reviewed the rule according to the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and E.O. 13132 (64 FR 43255 (Aug. 10, 1999)). OSHA concluded that the final rule did not meet the definition of a ''Federal intergovernmental mandate'' under the UMRA because OSHA standards do not apply to state or local governments except in states that voluntarily adopt State Plans. OSHA further noted that the rule did not impose costs of over $100 million per year on the private sector. (82 FR at 2634.)

As discussed above in Section II.A of this preamble, OSHA has determined that this extension does not impose any costs on private-sector employers beyond those costs already identified in the final rule for beryllium in general industry. Because OSHA reviewed the total costs of the beryllium rule under UMRA, no further review of those costs is necessary. Therefore, for purposes of UMRA, OSHA certifies that this final rule does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations of, or increase expenditures by the private sector by, more than $100 million in any year.

*F. Consultation and Coordination With Indian Tribal Governments*

OSHA reviewed this final rule in accordance with E.O. 13175 (65 FR 67249) and determined that it does not have ''tribal implications'' as defined in that order. This rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

*G. Legal Considerations*

The purpose of the OSH Act is ''to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654(b), 655(b). A safety or health standard is a standard ''which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment.'' 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk. See *Indus. Union Dep't, AFL–CIO* v. *Am. Petroleum Inst.,* 448 U.S. 607 (1980). In the beryllium rulemaking, OSHA made such a determination with respect to beryllium exposure in general industry (82 FR at 2479). This final rule does not impose any new requirements on employers. Therefore, this rule does not require an additional significant risk finding. See *Edison Elec. Inst.* v. *OSHA,* 849 F.2d 611, 620 (D.C. Cir. 1988).

In addition to materially reducing a significant risk, a health standard must be technologically and economically feasible. *United Steelworkers of Am., AFL–CIO–CLC* v. *Marshall,* 647 F.2d 1189, 1251 (D.C. Cir. 1980) (OSHA must reduce risk ''as far as it c[an] within the limits of [technological and economic] feasibility.''). A standard is technologically feasible when the protective measures it requires already exist, when available technology can bring the protective measures into existence, or when that technology is reasonably likely to develop. See *Am. Textile Mfrs. Inst.* v. *OSHA,* 452 U.S. 490, 513 (1981); *Am. Iron & Steel Inst.* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991). And a rule is economically feasible if it does not ''threaten massive dislocation to, or imperil the existence of, [an] industry.'' *United Steelworkers,* 647 F.2d at 1265 (internal citations and quotation marks omitted). In 2017, OSHA found the beryllium standard to be technologically and economically feasible. (82 FR at 2471). This final rule is technologically and economically feasible as well because it does not require employers to implement any additional protective measures and does not impose any additional costs on employers.

**List of Subjects in 29 CFR Part 1910**

Beryllium, Occupational safety and health.

Signed at Washington, DC, on August 6, 2018.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

**Amendments to Standards**

For the reasons stated in the preamble of this final rule, OSHA amends 29 CFR part 1910 as follows:

## PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

## Subpart Z—Toxic and Hazardous Substances

■ 1. The authority citation for subpart Z of 29 CFR part 1910 is revised to read as follows:

**Authority:** 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912); 29 CFR part 1911; and 5 U.S.C. 553, as applicable.

Section 1910.1030 also issued under Public Law 106–430, 114 Stat. 1901. Section 1910.1201 also issued under 40 U.S.C. 5101 *et seq.*

■ 2. Amend § 1910.1024 by revising paragraph (o)(2) to read as follows:

**§ 1910.1024 Beryllium.**

* * * * *

(o) * * *

(2) *Compliance dates.* (i) Obligations contained in paragraphs (c), (d), (g), (k), and (l) of this standard: March 12, 2018;

(ii) Change rooms and showers required by paragraph (i) of this standard: March 11, 2019;

(iii) Engineering controls required by paragraph (f) of this standard: March 10, 2020; and

(iv) All other obligations of this standard: December 12, 2018.

* * * * *

[FR Doc. 2018–17106 Filed 8–8–18; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2018–0228]**

### Drawbridge Operation Regulation; Delaware River, Burlington, NJ and Bristol, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation; cancellation.

**SUMMARY:** The Coast Guard is canceling the temporary deviation from the operating schedule that governs the SR 413/Burlington-Bristol bridge, which carries SR 413 across the Delaware River, mile 117.8, between Burlington, NJ and Bristol, PA. The cancellation of the deviation is necessary to remove operational restrictions placed on the bridge not utilized to facilitate bridge maintenance.

**DATES:** The temporary deviation published on April 26, 2018, 83 FR 18226 is cancelled as of August 9, 2018.

**ADDRESSES:** The docket for this deviation, USCG–2018–0228 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** On April 26, 2018, we published a temporary deviation entitled ''Drawbridge Operation Regulation; Delaware River, Burlington, NJ and Bristol, PA'' in the **Federal Register** (83 FR 18226). This temporary deviation was to facilitate bridge maintenance and painting of the vertical lift span of the drawbridge from May 1, 2018, through September 30, 2018. During the planned maintenance period, a work platform would have reduced one half of the bridge span vertical clearance to approximately 58 feet above mean high water in the closed position and approximately 132 feet above mean high water in the open position.

The temporary deviation is being cancelled due to delays in performing bridge maintenance outside the navigation span, thereby eliminating the need for a temporary deviation to facilitate bridge maintenance in the navigation span. Due to the cancellation of the work, this platform will not be installed and the bridge will operate under its regular operating schedule in 33 CFR 117.716. In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the cancellation date of the deviation.

Dated: August 2, 2018.

**Hal R. Pitts,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2018–16845 Filed 8–8–18; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2018–0693]**

### Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone—Milwaukee Open Water Swim

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone on the Milwaukee River, between the I–794 overpass to where the Milwaukee River and Kinnickinnic River meet in Milwaukee, WI for the Milwaukee Open Water Swim on August 11, 2018 to provide for the safety of life on navigable waterways during the event. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign. During the enforcement period, vessels and persons are prohibited from transiting through, mooring, or anchoring within this safety zone without approval from the Captain of the Port Lake Michigan or his or her designated representative.

**DATES:** The regulations in 33 CFR 165.929(f)(18) will be enforced from 6 a.m. through 10 a.m. on August 11, 2018.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email marine event coordinator MSTC Kaleena Carpino, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone (414) 747–7148, email *D09-SMB-SECLakeMichgan-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Safety Zone; Milwaukee Open Water Swim listed as (f)(18) in Table 165.929 of 33 CFR 165.929 on August 11, 2018 from 6 a.m. through 10 a.m. This action is being taken to provide for the safety of life on navigable waterways of the Milwaukee River in Milwaukee, WI. This safety zone will encompass all waters of the Milwaukee River from the I–794 overpass to where the Milwaukee River and Kinnickinnic River meet (NAD 83).

Pursuant to 33 CFR 165.929, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Lake Michigan, or his or her designated on-scene representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Lake Michigan via Channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Lake Michigan or his or her designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.929, Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone, and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port Lake Michigan or his or her designated on-scene representative may be contacted via VHF Channel 16 or at (414) 747–7182.

Dated: July 24, 2018.

**Thomas J. Stuhlreyer,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. 2018–17075 Filed 8–8–18; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2018–0659]**

**RIN 1625–AA00**

### Safety Zone; Lake Michigan, Whiting, Indiana

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Michigan in the vicinity of Whiting, Indiana. This zone is necessary to protect spectators and vessels from potential hazards associated with a competition involving motorized personal watercraft. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan.

**DATES:** This rule is effective from 6:50 a.m. on August 11, 2018 through 5:10 p.m. on August 12, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0659 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email LT John Ramos, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986–2155, email *D09-DG-MSUChicago-Waterways@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this competition in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

## III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.1.

The Coast Guard will enforce a safety zone from 6:50 a.m. through 5:10 p.m. on August 11 and August 12, 2018 for a competition utilizing motorized personal watercraft will take place in the vicinity of Lake Front Park in Whiting, Indiana. The Captain of the Port Lake Michigan has determined that a competition of this nature poses a significant risk to public safety and property. Such hazards include potential for collision with spectators and participants. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the competition takes place.

## IV. Discussion of the Rule

The Captain of the Port Lake Michigan has determined that this temporary safety zone is necessary to protect the public during the watercraft competition. This rule safety zone will be enforced from 6:50 a.m. until 5:10 p.m. on August 11, 2018 and August 12, 2018. The safety zone will encompass all navigable waters of Lake Michigan near Lake Front Park, bounded by a line drawn from the shore at 41°40.725 N, 087°28.633 W, then northeast to 41°40.891 N, 087°28.468 W, then northwest to 41°41.494 N, 087°29.559 W, then southwest back to the shore at 41°41.235 N, 087°29.779 W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16 or at (414) 747–7182.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced on two days from 6:50 a.m. until 5:10 p.m. on August 11, 2018 and August 12, 2018. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we will issue local Broadcast Notice to Mariners and Local Notice to Mariners so vessel owners and operators can plan accordingly. While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business,

organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone on Lake Michigan near North Avenue Beach in Chicago, IL. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0659 to read as follows:

**§ 165.T09–0659 Safety Zone; Lake Michigan, Whiting, Indiana.**

(a) *Location.* All navigable waters of Lake Michigan near Lake Front Park, bounded by a line drawn from the shore at 41°40.725 N, 087°28.633 W, then northeast to 41°40.891 N, 087°28.468 W, then northwest to 41°41.494 N, 087°29.559 W, then southwest back to the shore at 41°41.235 N, 087°29.779 W.

(b) *Enforcement period.* This rule will be effective from 6:50 a.m. on August 11, 2018 through 5:10 p.m. on August 12, 2018. It will be enforced from 6:50 a.m. through 5:10 p.m. on both days, August 11 and 12, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16 or at (414) 747–7182. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan, or an on-scene representative.

Dated: July 24, 2018.

**Thomas J. Stuhlreyer,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2018–17074 Filed 8–8–18; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2018–0724]**

**RIN 1625–AA00**

## Safety Zones; Discovery World Fireworks, Milwaukee Harbor, Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Michigan in the Milwaukee Harbor, Milwaukee, WI, for all navigable waters within a 100-yard radius of 43°01.980′ N, 087°53.580 W. This action is necessary to protect spectators, mariners, vessels, and property from potential hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan or a designated representative.

**DATES:** This rule is effective from 9 p.m. through 11 p.m. on August 11, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0724 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this document, call or email the marine event coordinator, MSTC Kaleena Carpino, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone (414) 747–7148, email *D09-SMB-SECLakeMichigan-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public, vessels, mariners, and property from the hazards associated with the fireworks display on August 11, 2018.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

## III. Legal Authority and Need for Rule

The legal basis for this rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

The Coast Guard will enforce a safety zone on August 11, 2018, from 9 p.m. through 11 p.m., for a fireworks display in Milwaukee Harbor on Lake Michigan. The Captain of the Port Lake Michigan has determined that this fireworks display will pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, falling and burning debris, and collisions among spectator vessels.

## IV. Discussion of the Rule

With the aforementioned hazards in mind, the Captain of the Port Lake Michigan has determined that this temporary safety zone is necessary to protect persons and vessels during the fireworks display in the waters of Milwaukee Harbor on Lake Michigan. This zone is effective and will be enforced from 9 p.m. until 11 p.m. on August 11, 2018. The safety zone will encompass all navigable waters within a 100-yard radius of 43°01.980′ N, 087°53.580′ W. (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or his or her designated on-scene representative. The Captain of the Port or his or her designated on-scene representative may be contacted via VHF Channel 16.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. The safety zone created by this rule will be relatively small and enforced for only two hours. Under certain conditions, vessels may still transit through the safety zone when permitted by the Captain of the Port. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the affected portion of Milwaukee Harbor on Lake Michigan between 9 p.m. and 11 p.m. on August 11, 2018. This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we will issue local Broadcast Notice to Mariners and Public Notice of Safety Zone so vessel owners and operators can plan accordingly.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in

understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone surrounding a fireworks display on Milwaukee Harbor in Lake Michigan. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0724 to read as follows:

**§ 165.T09–0724 Safety Zone; Discovery World Fireworks, Milwaukee Harbor, Milwaukee WI.**

(a) *Location.* All navigable waters within a 100-yard radius of 43°01.980′ N, 087°53.580 W.

(b) *Effective and enforcement period.* This rule is effective and will be enforced from 9 p.m. through 11 p.m. on August 11, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or an on-scene representative.

Dated: July 24, 2018.

**Thomas J. Stuhlreyer,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2018–17069 Filed 8–8–18; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2017–0396; FRL–9981–96—Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; Maryland; 2011 Base Year Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard for the Baltimore, Maryland Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision for the 2011 base year inventory for the Baltimore, Maryland moderate nonattainment area for the 2008 8-hour ozone national ambient air quality standard (NAAQS). The State of Maryland submitted the emission inventory through the Maryland Department of the Environment (MDE) to meet the nonattainment requirements for moderate ozone nonattainment areas for the 2008 8-hour ozone NAAQS. EPA is approving the 2011 base year emissions inventory for the 2008 8-hour ozone NAAQS as a revision to the Maryland state implementation plan (SIP) in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on September 10, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0396. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On July 18, 1997, EPA promulgated a revised ozone NAAQS of 0.08 ppm, averaged over eight hours. 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. *See* 44 FR 8202 (February 8, 1979). In 2008, EPA revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008).[1]

On May 21, 2012, the Baltimore, Maryland area was designated as moderate nonattainment for the 2008 8-hour ozone NAAQS. 77 FR 30088. The designation of the Baltimore, Maryland area as moderate nonattainment was effective July 20, 2012. The Baltimore, Maryland nonattainment area is comprised of Anne Arundel County, Baltimore County, Baltimore City, Carroll County, Harford County, and Howard County. Under section 172(c)(3) of the CAA, Maryland is required to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutants in its moderate nonattainment area.

On October 3, 2017 (82 FR 46010 and 82 FR 45997), EPA simultaneously published a notice of proposed rulemaking (NPR) and a direct final rule (DFR) for the State of Maryland approving the SIP revision. EPA received adverse comments on the rulemaking and withdrew the DFR prior to the effective date of December 4, 2017. In this final rulemaking, EPA is responding to the comments submitted on the proposed revision to the Maryland SIP and is approving Maryland's 2011 base year emissions inventory for the 2008 8-hour ozone NAAQS.

## II. Summary of SIP Revision and EPA Analysis

Under CAA section 172(c)(3), states are required to submit a comprehensive, accurate, and current account of actual emissions from all sources (point, nonpoint, nonroad, and onroad) in the nonattainment area. CAA section 182(a)(1) and (b) requires that areas designated as nonattainment and classified as moderate submit an inventory of all sources of ozone precursors no later than 2 years after the effective date of designation.

On December 30, 2016, MDE submitted a formal revision (SIP #16–16) to its SIP. The SIP revision consists of the 2011 base year inventory for the Baltimore, Maryland nonattainment area for the 2008 8-hour ozone NAAQS. In accordance with EPA's requirements for ozone SIP planning, ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,'' MDE selected 2011 for its base year emissions inventory. *See* 80 FR 12263 (March 6, 2015). MDE's 2011 base year inventory includes emissions estimates covering the general source categories of stationary point, area (nonpoint), quasi-point, nonroad mobile, onroad mobile, and Marine-Air-Rail (M–A–R).

EPA reviewed Maryland's 2011 base year emission inventory's results, procedures, and methodologies for the Baltimore, Maryland moderate nonattainment area and found them to meet the applicable requirements for approval under sections 110, 172(c)(3) and 182(a)(1) and (b) of the CAA.

Other specific requirements of Maryland's 2011 base year emissions inventory for the 2008 8-hour ozone NAAQS and the rationale for EPA's proposed action are explained in the prior direct final rule (DFR) and its accompanying NPR and will not be restated here. EPA received public comments on the NPR that will be addressed in section III of this rulemaking.

## III. Response to Comments

During the comment period, EPA received several anonymous comments on this rulemaking. EPA is responding to the comments submitted specific to this action on the proposed revision to the Maryland SIP. All other comments received were not specific to this action and thus are not addressed here.

*Comment 1:* The Commenter claims Maryland assumed Stage II controls were in effect even though the State has ''exercised enforcement discretion for new and existing sources effectively eliminating all reductions from any [Stage II] controls.'' Commenter provides a memorandum from MDE's Air & Radiation Management Administration (ARMA) titled ''Stage II Vapor Recovery Systems—Enforcement Discretion Policy (March 20, 2014).''

*Response 1:* EPA notes that Maryland's 2011 base year emissions inventory analysis for the 2008 ozone NAAQS was performed for calendar year 2011 using 2011 emissions data. Maryland continued to implement and enforce the Stage II program prior to issuance of MDE's enforcement policy on March 6, 2014, suspending state enforcement of the program from that time forward. Maryland intended to subsequently repeal the Stage II rule and to submit to EPA a SIP revision to remove the program from the SIP. Maryland submitted a SIP revision to EPA to remove the Stage II program from the SIP on August 28, 2017. However, the Stage II program was in operation and was being enforced in 2011. Therefore, EPA believes Maryland correctly estimated its 2011 emission inventory to include the Stage II program as an implemented, enforceable emission control measure. Therefore, EPA finds Maryland correctly estimated its emissions inventory to reflect Stage II as a control measure in place in the 2011 base year inventory period.

*Comment 2:* Commenter claims that the emissions calculations for ''Open Burning—Land Clearing'' uses an ozone

[1] On October 1, 2015, EPA strengthened the 8-hour ozone NAAQS to 0.070 ppm. *See* 80 FR 65292 (October 16, 2015). This rulemaking addresses the 2008 8-hour ozone NAAQS and does not address the 2015 8-hour ozone NAAQS.

season of only 92 days, which is not even half of the full ozone season.

*Response 2:* Maryland chose to use the peak ozone period of June to August (92 days) for the ''Open Burning—Land Clearing'' emissions calculations as their ozone season.[2] Under EPA's ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations (July 2017),'' the state shall ''select the representative months and work week days to include in the calculation of the ozone season day emissions. The temporal basis for these emissions should be representative of the conditions leading to nonattainment, as recommended by the state.'' [3] EPA finds that Maryland's calculations in the 2016 SIP submittal comply with the current guidance in choosing to select June to August as the ozone season for the ''Open Burning—Land Clearing'' emissions calculations, as Maryland states these months are typically peak ozone season.

*Comment 3:* Maryland assumed that ''commercial and industrial sources only operated 6 days a week instead of 7.'' Commenter notes that ''nothing in Maryland prevents businesses from operating 7 days a week and so Maryland should have used 7 days a week.''

*Response 3:* While Commenter is not specific as to which commercial and industrial sources are of concern, EPA's Emission Inventory Improvement Program (EIIP) guidance (May 2001) provides flexibility in the operation days. For example, the guidance for solvent cleaning operations states, ''Daily variations may apply for some of the industries. Some industries operate seven days per week, others only five days. Some industries are likely to operate two or three shifts per day, others may only have one.'' Therefore, ''the default value of uniform activity through the year is six days per week.'' [4] EPA finds that Maryland performed the calculations in accordance with the EIIP guidance.[5]

*Comment 4:* Commenter claims Maryland's inspection and maintenance (I/M) program is improperly represented in the emission modeling parameters selected by Maryland in the Motor Vehicle Emission Simulator (MOVES) modeling used to estimate the highway mobile source emissions portion of the emission inventory, which are used to calculate emissions benefits from the I/M program. The commenter claims MOVES parameters for I/M program coverage incorrectly included an I/M program motorist compliance rate of over 96% when the state is known to ''have a large number of (vehicle) failures that never return to get rechecked.'' Additionally, the commenter states that ''Maryland allows for almost 6 months of extensions after first testing and finding a problem that has to be fixed. This means that if a car is failing in the second half of the year it is possible to have a violating vehicle for the rest of the year meaning compliance is not achieved.'' Commenter would like EPA to require Maryland to use actual I/M data collected by the Maryland program to be used to set the I/M program parameters of the MOVES model instead of MOVES default parameters as this would reduce the reductions attributed to the I/M program and change the area's overall emissions inventory.

*Response 4:* The I/M program motorist compliance rate is represented by the number of complying vehicles (*i.e.,* vehicles with a confirmed final I/M test outcome, either passing the test or receiving a waiver from doing so) divided by the number of vehicles subject to testing in the area × 100. Maryland collects statistics for its Vehicle Emissions Inspection Program (VEIP) on an ongoing basis, and per a requirement of the federal requirements for I/M programs, annually reports program summary data to EPA for the prior calendar year. For purposes of the 2011 base year inventory, the relevant I/M annual report from Maryland to EPA was submitted on August 15, 2012, representing calendar year 2011.[6] For 2011, MDE reported that a total of 1,562,895 vehicles were tested under the VEIP program. Of these, 1,424,557 vehicles initially passed and 138,338 vehicles failed the VEIP test. Of the initial failures, 14,442 ultimately received a test ''waiver'' outcome after spending money for repairs up to a limit established by the VEIP program (but still not passing a test). Therefore, a total of 1,438,99 out of 1,562,895 vehicles received some form of final VEIP test outcome (either a passing test or a waiver) by the end of calendar year 2011, for a 92% compliance rate. However, Maryland calculated an overall 97% I/M program motorist compliance rate for the 2011 calendar year, when taking into account vehicles that received legally granted compliance extensions, but received a final outcome by the following July.[7] Maryland's 2011 I/M report tracks outcomes for these delayed compliance vehicles from the end of 2011 through July 2012 and factors them into an adjusted compliance rate for calendar year 2011. In doing so, MDE has attempted to account for many of the initially failing vehicles in the 2011 calendar year that did not receive a final I/M test outcome by the end of 2011. Taking into account these late complying vehicles, as well as vehicles that were identified as having been scrapped or relocated outside the I/M program area, MDE's calculated motorist compliance rate reached 96%, very near to the compliance rate assumed by MDE in the MOVES modeling performed to support the 2011 base year emission inventory.[8] EPA finds that the MDE made a reasonable estimate of I/M program motorist compliance rate for its base year inventory. Based on our review of state-reported 2011 I/M program data, EPA disagrees with the Commenter that the I/M program motorist compliance rate assumed by MDE for the base year inventory was not achieved in practice. *See* 40 CFR part 51.351(12).

*Comment 5:* Commenter requests that EPA fully evaluate all calculations to ensure Maryland has used the proper methodologies and assumptions.

*Response 5:* EPA has reviewed the stationary point source, area source, highway mobile, and nonroad mobile source sector emissions estimates for the 2011 base year inventory and is satisfied that MDE has followed the appropriate guidelines and used the latest available information to support its base year inventory estimates. EPA has reviewed the 2011 base year inventory for the Baltimore, Maryland moderate nonattainment area for the 2008 8-hour ozone NAAQS and finds that Maryland has followed the guidance for a base year inventory submission.

## IV. Final Action

EPA is approving the Maryland SIP revision which includes the 2011 base year inventory for the 2008 8-hour ozone NAAQS for the Baltimore, Maryland moderate nonattainment area because the inventory was prepared in accordance with requirements in sections 110, 172(c)(3) and 182(a)(1) and

[2] *See* EPA–R03–OAR–2017–0396–0005, page 109.

[3] *See https://www.epa.gov/sites/production/files/2017-07/documents/ei_guidance_may_2017_final_rev.pdf,* page 72.

[4] *See https://www.epa.gov/sites/production/files/2015-08/documents/iii06fin.pdf,* page 6.3–9.

[5] *See https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-improvement-program-eiip* for all EIIP technical reports.

[6] *See* Maryland's I/M annual report for calendar year 2011, dated July 2012, as submitted to EPA from MDE via letter to Brian Rehn from Marcia Ways, dated July 15, 2012.

[7] *See* Maryland's July 2012 IM Annual Report to EPA, dated July 2012, pages 4–17 for further details on MD's motorist compliance rate, based on actual 2011 I/M program data.

[8] *See* EPA–R03–OAR–2017–0396–0005, page 261.

(b) of the CAA and its implementing regulations including 40 CFR 51.915.

After receipt of adverse public comment on our prior direct final rule, EPA published an action to withdrawal the direct final rule (82 FR 66611, November 22, 2017). This withdrawal occurred prior to the effective date for the direct final action, preventing 40 CFR 52.1075(r) from being added to the SIP through the direct final action. With this final rule, EPA is now adding 40 CFR 52.1075(r) to Maryland's SIP.

## V. Statutory and Executive Order Reviews

### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving Maryland's 2011 base year inventory for the 2008 8-hour ozone NAAQS for the Baltimore, Maryland moderate nonattainment area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 26, 2018.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for ''2011 Base Year Emissions Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard'' at the end of the table to read as follows:

**§ 52.1070 Identification of plan.**

* * * * *

(e) * * *

EPA APPROVED NON-REGULATORY AND QUASI-REGULATORY MATERIAL

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 2011 Base Year Emissions Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard. | Baltimore, Maryland 2008 Ozone Moderate Nonattainment Area. | 12/30/2016 | 8/9/2018 [Insert **Federal Register** citation]. | See § 52.1075(r). |

■ 3. Section 52.1075 is amended by adding paragraph (r) to read as follows:

**§ 52.1075 Base year emissions inventory.**

* * * * *

(r) EPA approves as a revision to the Maryland state implementation plan the 2011 base year emissions inventory for the Baltimore, Maryland moderate nonattainment area for the 2008 8-hour ozone national ambient air quality standards submitted by the Maryland Department of the Environment on December 30, 2016. The 2011 base year emissions inventory includes emissions estimates that cover the general source categories of stationary point, quasi-point, area (nonpoint), nonroad mobile, onroad mobile, and Marine-Air-Rail (M–A–R). The inventory includes actual annual emissions and typical summer day emissions for the months of May through September for the ozone precursors, VOC and $NO_X$.

[FR Doc. 2018–16992 Filed 8–8–18; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA–HQ–OAR–2012–0918; FRL–9981–95–OAR]

## Air Quality Designations for the 2012 Primary Annual Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) for Areas in Florida

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is establishing initial air quality designations for the 2012 primary annual fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) for the remaining undesignated areas in the state of Florida. When the EPA designated the majority of areas in the country for this NAAQS in December 2014 and March 2015, the EPA deferred initial area designations for certain areas, including all of the Florida, because the EPA could not determine using available data whether the areas were meeting or not meeting the NAAQS. In August 2016, the EPA designated most of the state of Florida (62 of 67 counties). Following the August 2016 designation action, two areas (five counties) in Florida remained undesignated. The EPA could not determine at that time whether the areas were meeting or not meeting the NAAQS. Florida has now submitted complete, quality-assured, and certified air quality monitoring data for the period 2015–2017 for the areas identified in this action. Based on these data, the EPA is designating the remaining five counties as unclassifiable/attainment for the 2012 primary annual $PM_{2.5}$ NAAQS.

**DATES:** This final rule is effective on September 10, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2012–0918. All documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the EPA Docket Center, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

In addition, the EPA has established a website for the rulemakings to initially designate areas for the 2012 primary annual $PM_{2.5}$ NAAQS at: *https://www.epa.gov/particle-pollution-designations.* This website includes the EPA's final $PM_{2.5}$ designations actions, as well as state and tribal initial recommendation letters, the EPA's modification letters, technical support documents, responses to comments and other related technical information.

**FOR FURTHER INFORMATION CONTACT:** For general questions concerning this action, please contact: Carla Oldham, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539–04, Research Triangle Park, NC 27711, telephone (919) 541–3347, email at *oldham.carla@epa.gov.* The Region 4 contact is Madolyn Sanchez, U.S. EPA, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960, telephone (404) 562–9644, email at *sanchez.madolyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 14, 2012, the EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS to provide increased protection of public health from fine particle pollution (78 FR 3086; January 15, 2013). In that action, the EPA strengthened the primary annual $PM_{2.5}$ standard from 15.0 micrograms per cubic meter ($\mu g/m^3$) to 12.0 $\mu g/m^3$, which is attained when the 3-year average of the annual arithmetic means does not exceed 12.0 $\mu g/m^3$. Section 107(d) of the Clean Air Act (CAA), 42 U.S.C. 7407(d), governs the process for initial area designations after the EPA establishes a new or revised NAAQS. Under CAA section 107(d), each governor is required to, and each tribal leader may, if they so choose, recommend air quality designations to the EPA by a date that cannot be later than 1 year after the promulgation of a new or revised NAAQS. The EPA considers these recommendations as part of its duty to promulgate the area designations and boundaries for the new or revised NAAQS. If, after careful consideration of these recommendations, the EPA believes that it is necessary to modify a state's recommendation and intends to promulgate a designation different from a state's recommendation, the EPA must notify the state at least 120 days prior to promulgating the final designation and the EPA must provide the state an opportunity to demonstrate why any proposed modification is inappropriate. These modifications may relate either to an area's designation or to its boundaries.

On December 18, 2014, the Administrator of the EPA signed a final action promulgating initial designations for the 2012 $PM_{2.5}$ NAAQS for the majority of the United States, including areas of Indian country (80 FR 2206 FR; January 15, 2015). In that action, the EPA also deferred initial area designations for certain areas where available data, including air quality monitoring data, were insufficient to determine whether the area met or did not meet the NAAQS, but where forthcoming data were likely to result in complete and valid air quality data sufficient to determine whether these areas meet the NAAQS. Accordingly, the EPA stated that it would use the additional time available as provided under section 107(d)(1)(B) of the CAA to assess relevant information and subsequently promulgate initial designations for the identified areas through a separate rulemaking action or actions. The deferred areas included the entire state of Tennessee, except three counties in the Chattanooga area; several areas in the state of Georgia, including two neighboring counties in

the bordering states of Alabama and South Carolina; the entire state of Florida; and areas of Indian country located in these areas.

In separate actions published on April 15, 2015 (80 FR 18535), September 6, 2016 (81 FR 61136), and May 19, 2017 (82 FR 22888), the EPA promulgated designations of unclassifiable/attainment for all remaining deferred areas in the state of Georgia (including two neighboring counties in the bordering states of Alabama and South Carolina), all of the remaining deferred areas in the state of Tennessee, and 62 counties in the state of Florida, including areas of Indian country located in those areas.

## II. Purpose and Designation Decisions Based on 2015–2017 Data

The purpose of this action is to announce and promulgate initial area designations of unclassifiable/attainment for the 2012 $PM_{2.5}$ NAAQS for the remaining five undesignated counties in the state of Florida. The counties are: Alachua County, Broward County, Gilchrist County, Miami-Dade County, and Palm Beach County. Alachua and Gilchrist Counties make up the Gainesville, FL Core Based Statistical Area (CBSA). Broward, Miami-Dade, and Palm Beach Counties make up the Miami-Fort Lauderdale-West Palm Beach Counties CBSA. The EPA initially deferred designating these counties in the EPA's January 15, 2015, rulemaking.[1] Since then, the state of Florida has submitted to the EPA complete, quality-assured, and certified air quality monitoring data from 2015–2017 for the two CBSAs.[2] The air quality data indicate that the CBSAs are attaining the 2012 $PM_{2.5}$ NAAQS. In addition, because there are no nearby violating areas, the counties in these CBSAs are not causing or contributing to a violation of the 2012 $PM_{2.5}$ NAAQS in a nearby area. Therefore, the EPA is designating the remaining five undesignated counties in these CBSAs as unclassifiable/attainment. These designations are consistent with Florida's recommended area designations and boundaries for these areas for the 2012 $PM_{2.5}$ NAAQS. The table at the end of this final rule (amendments to 40 CFR 81.310—Florida) lists all areas for which the EPA has promulgated an initial designation in Florida. Areas of Indian country located in the listed areas are included in the designated areas.

## III. Environmental Justice Considerations

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. The EPA provided a meaningful opportunity for members of the public to participate in the development of the 2012 primary annual $PM_{2.5}$ NAAQS that underlies the present action, including conducting an outreach and information call with environmental justice organizations on August 9, 2012.

As part of the process of reviewing the PM air quality criteria and revising the primary annual $PM_{2.5}$ NAAQS, the EPA identified persons from lower socioeconomic strata as an at-risk population for PM-related health effects. As a result, the EPA carefully evaluated the potential impacts on low-income and minority populations. Based on this evaluation and consideration of public comments, the EPA eliminated spatial averaging provisions as part of the form of the primary annual $PM_{2.5}$ NAAQS in order to avoid potential disproportionate impacts on at-risk populations, including populations from lower socioeconomic strata. *See* 78 FR at 3267 (January 15, 2013).

This final action addresses designation determinations for certain areas in Florida for the 2012 primary annual $PM_{2.5}$ NAAQS. The CAA requires the EPA to determine through a designation process whether an area meets or does not meet any new or revised national primary or secondary NAAQS. The promulgation of area designations facilitates public understanding and awareness of the air quality in an area. For this action, the complete and valid monitoring data from Florida indicate that all the areas at issue in this action are meeting the 2012 primary annual $PM_{2.5}$ NAAQS. Furthermore, no area affected by this action is contributing to a violation of the 2012 primary annual $PM_{2.5}$ NAAQS in a nearby area.

## IV. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is exempt from review by the Office of Management and Budget because it responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS.

### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because actions such as air quality designations after promulgating a new revised NAAQS are exempt from review under Executive Order 12866.

### *C. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. This action fulfills the non-discretionary duty for the EPA to promulgate air quality designations after promulgation of a new or revised NAAQS and does not contain any information collection activities.

### *D. Regulatory Flexibility Act (RFA)*

This designation action under CAA 107(d) is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. Section 107(d)(2)(B) of the CAA explicitly provides that designations are exempt from the notice and comment provisions of the APA. In addition, designations under CAA section 107(d) are not among the list of actions that are subject to the notice and comment procedures of CAA section 307(d).

### *E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in the CAA for the 2012 primary annual $PM_{2.5}$ NAAQS (40 CFR 50.18). The CAA establishes the process whereby states take primary responsibility for developing plans to meet the 2012 primary annual $PM_{2.5}$ NAAQS.

### *F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

[1] *See* also the technical support document for the deferred Florida areas in the rulemaking docket, documents numbered EPA–HQ–OAR–2012–0918–0323 and EPA–HQ–2012–0918–0332.

[2] Monitoring requirements are in accordance with 40 CFR part 58. Design values are calculated in accordance with 40 CFR part 50, Appendix N.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The CAA provides for states and eligible tribes to develop plans to regulate emissions of air pollutants within their areas, as necessary, based on the designations. The TAR provides tribes the opportunity to apply for eligibility to develop and implement CAA programs, such as programs to attain and maintain the $PM_{2.5}$ NAAQS, but it leaves to the discretion of the tribe the decision of whether to apply to develop these programs and which programs, or appropriate elements of a program, the tribe will seek to adopt. This rule does not have a substantial direct effect on one or more Indian tribes.

*H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health of environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this determination is contained in Section III of this preamble, ''Environmental Justice Considerations.''

*L. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the U.S. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*M. Judicial Review*

Section 307 (b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This final action, in conjunction with the previous final actions designating areas across the U.S. for the 2012 primary annual $PM_{2.5}$ NAAQS, is ''nationally applicable'' within the meaning of section 307(b)(1). At the core of this final action is the EPA's interpretations of the definitions of nonattainment, attainment and unclassifiable under section 107(d)(1) of the CAA, and its application of those interpretations to areas across the country. For the same reasons, the Administrator is also determining that the final designations are of nationwide scope and effect for the purposes of section 307(b)(1) of the CAA. This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, *reprinted* in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this final action extends to numerous judicial circuits since the designations apply to areas across the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the action to be of ''nationwide scope or effect'' and for venue to be in the D.C. Circuit.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 31, 2018.

**Andrew R. Wheeler,**

*Acting Administrator.*

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

## PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

## Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.310 is amended by revising the table titled, ''Florida—2012 Annual $PM_{2.5}$ NAAQS (Primary)'' to read as follows:

**§ 81.310 Florida.**

* * * * *

FLORIDA—2012 ANNUAL $PM_{2.5}$ NAAQS

[Primary]

| Designated area [1] | Designation | | Classification | |
|---|---|---|---|---|
| | Date [2] | Type | Date [2] | Type |
| Statewide: | | | | |
| Alachua County | 9/10/2018 | Unclassifiable/Attainment. | | |
| Baker County | | Unclassifiable/Attainment. | | |

FLORIDA—2012 ANNUAL $PM_{2.5}$ NAAQS—Continued

[Primary]

| Designated area [1] | Designation | | Classification | |
|---|---|---|---|---|
| | Date [2] | Type | Date [2] | Type |
| Bay County | | Unclassifiable/Attainment. | | |
| Bradford County | | Unclassifiable/Attainment. | | |
| Brevard County | | Unclassifiable/Attainment. | | |
| Broward County | 9/10/2018 | Unclassifiable/Attainment. | | |
| Calhoun County | | Unclassifiable/Attainment. | | |
| Charlotte County | | Unclassifiable/Attainment. | | |
| Citrus County | | Unclassifiable/Attainment. | | |
| Clay County | | Unclassifiable/Attainment. | | |
| Collier County | | Unclassifiable/Attainment. | | |
| Columbia County | | Unclassifiable/Attainment. | | |
| DeSoto County | | Unclassifiable/Attainment. | | |
| Dixie County | | Unclassifiable/Attainment. | | |
| Duval County | | Unclassifiable/Attainment. | | |
| Escambia County | | Unclassifiable/Attainment. | | |
| Flagler County | | Unclassifiable/Attainment. | | |
| Franklin County | | Unclassifiable/Attainment. | | |
| Gadsden County | | Unclassifiable/Attainment. | | |
| Gilchrist County | 9/10/2018 | Unclassifiable/Attainment. | | |
| Glades County | | Unclassifiable/Attainment. | | |
| Gulf County | | Unclassifiable/Attainment. | | |
| Hamilton County | | Unclassifiable/Attainment. | | |
| Hardee County | | Unclassifiable/Attainment. | | |
| Hendry County | | Unclassifiable/Attainment. | | |
| Hernando County | | Unclassifiable/Attainment. | | |
| Highlands County | | Unclassifiable/Attainment. | | |
| Hillsborough County | | Unclassifiable/Attainment. | | |
| Holmes County | | Unclassifiable/Attainment. | | |
| Indian River County | | Unclassifiable/Attainment. | | |
| Jackson County | | Unclassifiable/Attainment. | | |
| Jefferson County | | Unclassifiable/Attainment. | | |
| Lafayette County | | Unclassifiable/Attainment. | | |
| Lake County | | Unclassifiable/Attainment. | | |
| Lee County | | Unclassifiable/Attainment. | | |
| Leon County | | Unclassifiable/Attainment. | | |
| Levy County | | Unclassifiable/Attainment. | | |
| Liberty County | | Unclassifiable/Attainment. | | |
| Madison County | | Unclassifiable/Attainment. | | |
| Manatee County | | Unclassifiable/Attainment. | | |
| Marion County | | Unclassifiable/Attainment. | | |
| Martin County | | Unclassifiable/Attainment. | | |
| Miami-Dade County | 9/10/2018 | Unclassifiable/Attainment. | | |
| Monroe County | | Unclassifiable/Attainment. | | |
| Nassau County | | Unclassifiable/Attainment. | | |
| Okaloosa County | | Unclassifiable/Attainment. | | |
| Okeechobee County | | Unclassifiable/Attainment. | | |
| Orange County | | Unclassifiable/Attainment. | | |
| Osceola County | | Unclassifiable/Attainment. | | |
| Palm Beach County | 9/10/2018 | Unclassifiable/Attainment. | | |
| Pasco County | | Unclassifiable/Attainment. | | |
| Pinellas County | | Unclassifiable/Attainment. | | |
| Polk County | | Unclassifiable/Attainment. | | |
| Putnam County | | Unclassifiable/Attainment. | | |
| St. Johns County | | Unclassifiable/Attainment. | | |
| St. Lucie County | | Unclassifiable/Attainment. | | |
| Santa Rosa County | | Unclassifiable/Attainment. | | |
| Sarasota County | | Unclassifiable/Attainment. | | |
| Seminole County | | Unclassifiable/Attainment. | | |
| Sumter County | | Unclassifiable/Attainment. | | |
| Suwanee County | | Unclassifiable/Attainment. | | |
| Taylor County | | Unclassifiable/Attainment. | | |
| Union County | | Unclassifiable/Attainment. | | |
| Volusia County | | Unclassifiable/Attainment. | | |
| Wakulla County | | Unclassifiable/Attainment. | | |
| Walton County | | Unclassifiable/Attainment. | | |
| Washington County | | Unclassifiable/Attainment. | | |

[1] Includes areas of Indian country located in each county or area, except as otherwise specified.
[2] This date is October 6, 2016, unless otherwise noted.

* * * * *

[FR Doc. 2018–17080 Filed 8–8–18; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2017–0315; FRL–9980–51]**

### Cerevisane (Cell Walls of Saccharomyces cerevisiae Strain LAS117); Exemption From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117) in or on all food commodities when used in accordance with label directions and good agricultural practices. Lesaffre Yeast Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117) under FFDCA.

**DATES:** This regulation is effective August 9, 2018. Objections and requests for hearings must be received on or before October 9, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0315, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0315 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 9, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0315, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Background

In the **Federal Register** of March 6, 2018 (83 FR 9471) (FRL–9973–27), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F8535) by Technology Sciences Group Inc., 712 Fifth Street, Suite A, Davis, CA 95616 (on behalf of Lesaffre Yeast Corporation, 7475 W Main St., Milwaukee, WI 53214). The petition requested that 40 CFR 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the systemic resistance inducer (SRI) cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117) in or on all food commodities. That document referenced a summary of the petition prepared by the petitioner, Technology Sciences Group Inc., (on behalf of Lesaffre Yeast Corporation), which is available in the docket via *http://www.regulations.gov.* There were no relevant comments received in response to the notice of filing.

## III. Final Rule

*A. EPA's Safety Determination*

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the

pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.'' FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

EPA evaluated the available toxicity and exposure data on cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117) and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. EPA also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Cerevisane is a whole cell wall extract of *Saccharomyces cerevisiae* strain LAS117. *Saccharomyces cerevisiae* is a common source of yeast, commonly used in the manufacturing of beers, wines, and liquor intended for human consumption because of its ability to ferment sugars into ethanol.

Cerevisane is a systemic resistance inducer (SRI) that aids in the up-regulation of plant defense genes resulting in physiological changes, including the reinforcement of plant cell walls and the production of antimicrobial compounds, *e.g.,* hydrogen peroxide (an oxidant active against a wide variety of microorganisms) and phytoalexins (which inhibit mycelium growth and the fruitification of susceptible fungal pathogens), that impart resistance against fungal diseases.

Based on the data submitted in support of this petition and the Agency's assessment of that data, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children from aggregate exposures to a cerevisane (cells walls of *Saccharomyces cerevisiae* strain LAS117). This conclusion is based on the lack of toxicity associated with this pesticide chemical residue; the available toxicology data indicate that the active ingredient is of low toxicity and is not a developmental toxicant or a mutagen; therefore, no toxicological endpoints were identified. Accordingly, given the lack of threshold effects, the FQPA Safety Factor need not be retained. The Agency has conducted a qualitative assessment of exposure and determined that dietary and drinking water exposure from the pesticide use is expected to be negligible since significant residues are not expected due to low application rates and rapid degradation rates following application. Non-occupational exposures are not expected since cerevisane (cells walls of *Saccharomyces cerevisiae* strain LAS117) is not intended for residential use. Given the lack of toxicity, this minimal exposure aggregated with the background levels already present in commonly consumed foods that contain baker's yeast, or beer, wine, and liquor do not pose a risk of concern. A full explanation of the data upon which EPA relied, its risk assessment, and other supporting documents is available in the docket for this action as described under **ADDRESSES**.

Based on its safety determination, EPA is establishing an exemption from the requirement of a tolerance for residues of cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117) in or on all food commodities when used in accordance with label directions and good agricultural practices.

*B. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes due to the lack of concern about safety for cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117) at any exposure level.

## IV. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10,

1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

**V. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 31, 2018.

**Richard P. Keigwin, Jr.,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1357 to subpart D to read as follows:

**§ 180.1357 Cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117); exemption from the requirement of a tolerance.**

Residues of the biochemical pesticide cerevisane (cell walls of *Saccharomyces cerevisiae* strain LAS117) are exempt from the requirement of a tolerance in or on all food commodities, when used in accordance with label directions and good agricultural practices.

[FR Doc. 2018–17081 Filed 8–8–18; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

Federal Register

Vol. 83, No. 154

Thursday, August 9, 2018

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 205

**[Document Number AMS–NOP–18–0029; NOP–18–01]**

### Meeting of the National Organic Standards Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is announcing a meeting of the National Organic Standards Board (NOSB) to assist the USDA in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of the Organic Foods Production Act (OFPA).

**DATES:** The Board will receive public comments via webinars on October 16 and 18, 2018, from 1:00 p.m. to approximately 4:00 p.m. Eastern Time. An in-person meeting will be held October 24–26, 2018, from 8:30 a.m. to approximately 6:00 p.m. Eastern Time. In-person oral comments will be heard on Wednesday, October 24, and possibly Thursday, October 25, 2018. The deadline to submit written comments and/or sign up for oral comment at either the webinar or face-to-face meeting is 11:59 p.m. ET, October 4, 2018.

**ADDRESSES:** The webinars are virtual and will be accessed via the internet and/or phone. Access information will be available on the AMS website prior to the webinars. The in-person meeting will take place at the Intercontinental Saint Paul Riverfront Hotel, 11 Kellogg Boulevard East, Saint Paul, Minnesota 55101, United States. Detailed information pertaining to the webinars and in-person meeting can be found at *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-st-paul-mn.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Michelle Arsenault, Advisory Committee Specialist, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW, Room 2642–S, Mail Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; Email: *nosb@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The NOSB makes recommendations to the USDA about whether substances should be allowed or prohibited in organic production and/or handling, assists in the development of standards for organic production, and advises the Secretary on other aspects of the implementation of the OFPA. The NOSB is holding a public meeting to discuss and vote on proposed recommendations to the USDA, to receive updates from the USDA National Organic Program (NOP) on issues pertaining to organic agriculture, and to receive comments from the organic community. The meeting and webinars are open to the public. No registration is required except to sign up for oral comments. All meeting documents, including the meeting agenda, NOSB proposals and discussion documents, instructions for submitting and viewing public comments, and instructions for requesting time for oral comments, will be available on the AMS website at *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-st-paul-mn.* Please check the website periodically for updates. Meeting topics will encompass a wide range of issues, including substances petitioned for addition to or deletion from the National List of Allowed and Prohibited Substances (National List), substances on the National List that are under sunset review, and guidance on organic policies. Participants and attendees may take photos and video at the meeting, but not in a manner that disturbs the proceedings.

*Public Comments:* Comments should address specific topics noted on the meeting agenda.

*Written comments:* Written public comments will be accepted on or before 11:59 p.m. ET on October 4, 2018, via *http://www.regulations.gov:* Document #AMS–NOP–18–0029. Comments submitted after this date will be provided to the NOSB, but Board members may not have adequate time to consider those comments prior to making recommendations. The NOP strongly prefers comments to be submitted electronically. However, written comments may also be submitted (*i.e.,* postmarked) via mail to the person listed under **FOR FURTHER INFORMATION CONTACT** by or before the deadline.

*Oral Comments:* The NOSB is providing the public multiple dates and opportunities to provide oral comments and will accommodate as many individuals and organizations as time permits. Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. ET, October 4, 2018, and can register for only one speaking slot: Either during the webinars scheduled for October 16 and 18, or at the in-person meeting, scheduled for October 24–26, 2018. Due to the limited time allotted for in-person public comments during the in-person meeting, commenters are strongly encouraged to comment during the webinar(s). Instructions for registering and participating in the webinar can be found at *www.ams.usda.gov/NOSBMeetings.*

*Meeting Accommodations:* The meeting hotel is ADA Compliant, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public meeting, please notify the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for reasonable accommodation will be made on a case-by-case basis.

Dated: July 26, 2018.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2018–16386 Filed 8–8–18; 8:45 am]

BILLING CODE 3410–02–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2018–0705; Product Identifier 2018–NM–077–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This proposed AD was prompted by a report that during removal of left-hand (LH) gear rib 5, four failed fasteners were discovered. This proposed AD would require a one-time ultrasonic inspection of the LH and right-hand (RH) wing rib 5-to-rear spar attachments for cracked or failed fasteners, and if necessary, a detailed inspection of the gear rib 5 and spar web for cracks and damage, a rotating probe test of the gear rib and spar web bolt holes for cracks and damage, reaming the gear rib and the spar web bolt holes, and replacement of cracked or failed fasteners. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 24, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* internet: *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

### Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0705; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3223.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0705; Product Identifier 2018–NM–077–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0102, dated April 27, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

> During removal of the left hand (LH) rib 5, two of the fasteners (bolts) attaching the rib to the wing inner rear spar were found to have failed and two more failed during their removal. Two of the bolts were found separated from the bolt shanks when the overcoat sealant was being removed, and the other two bolt heads broke away during removal.
>
> This condition, if not detected and corrected, could reduce the structural integrity of the wing.
>
> To address this possible unsafe condition, Airbus issued [Service Bulletin] SB A320–57–1167 to provide inspection instructions. After that SB was issued, a potential manufacturing issue was identified on early production A321 [airplanes] concerning reports of fasteners ''jamming'' during installation on spar assemblies. A process change was introduced in production line, and SB A320–57–1167 was revised, changing the affected population to include all A321 aeroplanes delivered before the introduction of that process change.
>
> For the reasons described above, this [EASA] AD requires a one-time special detailed [ultrasonic] inspection (SDI) of the wing rib 5-to-rear spar attachments, both LH and right hand (RH) wings, [and if necessary, a detailed inspection of the gear rib 5 and spar web for cracks and damage (cracks along the length of the bolt or broken bolt), a rotating probe test of the gear rib and spar web bolt holes for cracks and damage (cracks in the bolt holes), reaming the gear rib and the spar web bolt holes] and, depending on findings, accomplishment of a repair [replacement of cracked or failed (broken) fasteners (bolts)]. This [EASA] AD also requires the reporting of findings.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0705.

### Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Service Bulletin A320–57–1167, Revision 01, dated January 16, 2018. This service information describes procedures for a one-time special detailed (ultrasonic) inspection of the LH and RH wing rib 5-to-rear spar attachments for cracked or failed (broken) fasteners (bolts), and if necessary, a detailed inspection of the gear-rib-5 and spar web for cracks and damage (cracks along the length of the bolt or broken bolt), a rotating probe test of the gear rib and spar web bolt holes for cracks and damage (cracks in the bolt holes), reaming the gear rib and the spar web bolt holes, and replacement of the cracked or damaged (broken) fasteners (bolts). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation

in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

**Proposed Requirements of This NPRM**

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the MCAI or Service Information.'' This proposed AD also would require sending the inspection results to Airbus SAS.

**Differences Between This Proposed AD and the MCAI or Service Information**

The MCAI specifies credit for actions accomplished in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, dated August 10, 2011. The MCAI also discusses a potential manufacturing issue that was identified on early production Model A321 airplanes concerning reports of fasteners ''jamming'' during installation on spar assemblies. The corrective action specified in Airbus Service Bulletin A320–57–1167, dated August 10, 2011, includes the same process that produced ''jamming'' previously. Therefore, this proposed AD does not include credit for actions accomplished using the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, dated August 10, 2011.

**Explanation of Change to Applicability**

We have revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected model.

**Costs of Compliance**

We estimate that this proposed AD affects 29 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 16 work-hours × $85 per hour = $1,360 | $0 | $1,360 | $39,440 |

We estimate that it would take about 1 work-hour per product to comply with the proposed reporting requirement in this proposed AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of reporting the inspection results on U.S. operators to be $2,465, or $85 per product.

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 20 work-hours × $85 per hour = $1,700 | $0 | $1,700 |

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this NPRM is 2120–0056. The paperwork cost associated with this NPRM has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this NPRM is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Airbus SAS:** Docket No. FAA–2018–0705; Product Identifier 2018–NM–077–AD.

**(a) Comments Due Date**

We must receive comments by September 24, 2018.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes, certificated in any category, as identified in Airbus Service Bulletin A320–57–1167, Revision 01, dated January 16, 2018.

**(d) Subject**

Air Transport Association (ATA) of America Code 57, Wings.

**(e) Reason**

This AD was prompted by a report that during removal of left-hand (LH) gear rib 5, four failed fasteners (bolts attaching the gear rib to the wing inner rear spar) were discovered. We are issuing this AD to detect and correct cracked or failed (broken) fasteners (bolts) of the rib 5-to-rear spar attachment, which could lead to reduced structural integrity of the wing.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Inspection of the Rib 5-to-Rear Spar Attachment Fasteners (Bolts)**

Within 30 months after the effective date of this AD, do a special detailed (ultrasonic) inspection of the LH and right-hand (RH) wing rib 5-to-rear spar attachment fasteners (bolts) for cracked or failed (broken) fasteners (bolts), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 01, dated January 16, 2018.

**(h) Replacement of Cracked or Failed Fasteners (Bolts)**

If any cracked or failed (broken) fastener (bolt) is found during any inspection required by paragraph (g) of this AD, before further flight, do the actions specified in paragraph (h)(1), (h)(2), (h)(3) and (h)(4) of this AD, as applicable.

(1) Do a detailed inspection of the gear rib 5 and spar web for cracks and damage (cracks along the length of the bolt or broken bolt), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 01, dated January 16, 2018. If any crack or damage is found during any inspection required by this paragraph, before further flight, obtain corrective actions approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA); and accomplish the corrective actions within the compliance time specified therein. If approved by the DOA, the approval must include the DOA-authorized signature.

(2) If no cracks or damage are found during any inspection required by paragraph (h)(1) of this AD: Do a rotating probe test of the gear rib and spar web bolt holes for cracks and damage (cracks in the bolt holes), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 01, dated January 16, 2018. If any crack or damage is found during any inspection required by this paragraph, before further flight, obtain corrective actions approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA; and accomplish the corrective actions within the compliance time specified therein. If approved by the DOA, the approval must include the DOA authorized signature.

(3) If no cracks or damage are found during any inspection required by paragraph (h)(2) of this AD: Ream the gear rib and the spar web bolt holes, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 01, dated January 16, 2018. If an oversize larger than 0.794 millimeter (0.0313 inch) is required, before further flight, obtain corrective actions approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA; and accomplish the corrective actions within the compliance time specified therein. If approved by the DOA, the approval must include the DOA authorized signature.

(4) Replace any cracked or failed fasteners (bolts) in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 01, dated January 16, 2018.

**(i) Reporting**

Within 90 days after the special detailed inspection required by paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later, report the inspection results (both positive and negative) to Airbus SAS in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 01, dated January 16, 2018. If operators have reported findings as part of obtaining any corrective actions approved by the EASA DOA, operators are not required to report those findings as specified in this paragraph.

**(j) Paperwork Reduction Act Burden Statement**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

**(k) Other FAA AD Provisions**

The following provisions also apply to this AD:

*(1) Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

*(2) Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

*(3) Required for Compliance (RC):* Except as required by paragraph (i) of this AD: If any service information contains procedures or

tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(l) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0102, dated April 27, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0705.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3223.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* internet: *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on July 27, 2018.

**James Cashdollar,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018–16733 Filed 8–8–18; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2018–0611; Product Identifier 2018–NE–21–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce plc Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Rolls-Royce plc (RR) Trent 1000–A2, Trent 1000–C2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 turbofan engine models. This proposed AD was prompted by reports of intermediate-pressure compressor (IPC) rotor seal failures. This proposed AD would require initial and repetitive on-wing borescope inspections (BSI) of affected IPC rotor seals, and removing any cracked parts from service. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 24, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12 140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *corporate.care@rolls-royce.com;* internet: *https://customers.rolls-royce.com/public/rollsroycecare.* You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

### Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0611; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0611; Product Identifier 2018–NE–21–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0095, dated April 24, 2018 (referred to hereinafter as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> During an engine shop visit, an affected seal was found with cracking at the seal head. Propagation of such cracking may lead to failure, causing secondary impact damage to the IPC module.
>
> This condition, if not detected and corrected, could lead to engine power loss, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, RR published the NMSB, providing instructions for on-wing borescope inspections. RR previously issued NMSB TRENT 1000 72–J353, which contains instructions for in-shop inspections.
>
> For the reasons described above, this [EASA] AD requires repetitive borescope inspections of the front face of the affected seals and, depending on the findings, accomplishment of applicable corrections action(s).

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0611.

### Related Service Information Under 1 CFR Part 51

We reviewed RR Non-Modification Service Bulletin (NMSB) Trent 1000 72–

J353, Revision 2, dated February 14, 2018; RR Service Bulletin (SB) Trent 1000 72–J704, Initial Issue, dated June 23, 2017; and RR Alert NMSB Trent 1000 72–AJ929, Initial Issue, dated November 23, 2017. RR NMSB Trent 1000 72–J353, Revision 2, dated February 14, 2018, describes procedures for performing BSI of the front and rear face of the IPC rotor seal and defines acceptance and rejection criteria. RR SB Trent 1000 72–J704, Initial Issue, dated June 23, 2017, introduces a revised IPC. RR Alert NMSB Trent 1000 72–AJ929, Initial Issue, dated November 23, 2017, describes procedures for performing BSI of the front face of the IPC rotor seal and defines acceptance and rejection criteria.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

## FAA's Determination

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

## Proposed AD Requirements

This proposed AD would require initial and repetitive on-wing BSI of affected IPC rotor seals, and removing any cracked parts from service.

## Costs of Compliance

We estimate that this proposed AD affects 28 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspect IPC rotor seal | 7 work-hours × $85 per hour = $595 | $0 | $595 | $16,660 |

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

## Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Rolls-Royce plc:** Docket No. FAA–2018–0611; Product Identifier 2018–NE–21–AD.

**(a) Comments Due Date**

We must receive comments by September 24, 2018.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Rolls-Royce plc (RR) Trent 1000–A2, Trent 1000–C2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 turbofan engine models with intermediate-pressure compressor (IPC) rotor seal, part number (P/N) KH77674, installed.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

**(e) Unsafe Condition**

This AD was prompted by reports of IPC rotor seal failures. We are issuing this AD to prevent an IPC rotor seal failure. The unsafe condition, if not addressed, could result in failure of the IPC rotor seal, loss of engine thrust control, and reduced control of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Required Actions**

(1) Perform an on-wing borescope inspection (BSI) of the IPC rotor seal using paragraph 3, Accomplishment Instructions,

of RR Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AJ929, Initial Issue, dated November 23, 2017, as follows:

(i) For engines with an IPC rotor seal with 300 cycles since new (CSN) or more as of the effective date of this AD, perform a BSI before the IPC rotor seal accumulates 400 flight cycles (FC) after the effective date of this AD.

(ii) For engines with an IPC rotor seal with less than 300 CSN as of the effective date of this AD, perform a BSI before the IPC rotor seal accumulates 300 CSN or within 100 FC after the effective date of this AD, whichever is later.

(iii) For engines that were modified to incorporate RR Service Bulletin (SB) Trent 1000 72–J704, Initial Issue, dated June 23, 2017, before the effective date of this AD, perform a BSI before the IPC rotor seal accumulates 400 FC since the shop visit modification or before the next flight, whichever occurs later.

(2) Repeat the on-wing BSI at intervals in accordance with Figure 2 of RR Alert NMSB Trent 1000 72–AJ929, Initial Issue, dated November 23, 2017.

(3) An in-shop inspection in accordance with paragraph 3, Accomplishment Instructions, of RR NMSB Trent 1000 72–J353, Revision 2, dated February 14, 2018, may be substituted for an on-wing BSI as required by paragraphs (g)(1) and (2) of this AD, within the compliance times specified by paragraphs (g)(1) and (2) of this AD.

(4) If a crack is found on the front face of the seal that is at or beyond the rejection limits specified in Figures 1, 2, and 3 of RR Alert NMSB Trent 1000 72–AJ929, Initial Issue, dated November 23, 2017, replace the IPC rotor seal with a part eligible for installation before further flight.

**(h) Operating Prohibition**

After the effective date of this AD, do not operate an aircraft that has two engines installed that are both required by this AD to complete either the 50 FC interval inspections or the single 100 FC fly-on period as specified in Figures 1, 2, and 3 of RR Alert NMSB Trent 1000 72–AJ929, Initial Issue, dated November 23, 2017.

**(i) Non-Required Action**

No reporting requirement contained within any of the Alert NMSBs referenced in paragraphs (g)(1), (2), and (3) of this AD are required by this AD.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (k)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

**(k) Related Information**

(1) For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

(2) Refer to European Aviation Safety Agency (EASA) AD 2018–0095, dated April 24, 2018, for more information. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2018–0611.

(3) For service information identified in this proposed AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *corporate.care@rolls-royce.com;* internet: *https://customers.rolls-royce.com/public/rollsroycecare.* You may view this referenced service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on July 30, 2018.

**Robert J. Ganley,**

*Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.*

[FR Doc. 2018–16649 Filed 8–8–18; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2018–0694; Directorate Identifier 2016–SW–068–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Airbus Helicopters Model EC225LP helicopters. This proposed AD would require repetitive inspections of each life raft inflation cylinder percussion system bellcrank (bellcrank). This proposed AD is prompted by reports of jammed bellcranks. The actions of this proposed AD are intended to prevent an unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by October 9, 2018.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0694; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

**FOR FURTHER INFORMATION CONTACT:** David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *david.hatfield@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy

of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

**Discussion**

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2016–0200, dated October 11, 2016 (AD 2016–0200), to correct an unsafe condition for Airbus Helicopters Model EC 225 LP helicopters. EASA advises of a report of the left-hand and right-hand bellcranks becoming jammed. EASA states an investigation determined the bellcranks were jammed by the accumulation of a foreign coating material in the bellcrank hole. EASA further states that investigation of an additional incident of a jammed bellcrank determined that corrosion in the bellcrank hole caused the jam. This condition, according to EASA, could result in failure of the life rafts to release in an emergency and subsequent injury to occupants during an otherwise survivable accident. To address this, EASA AD 2016–0200 requires repetitive cleaning and lubrication of each bellcrank and pivot link.

**FAA's Determination**

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

**Related Service Information**

We reviewed Airbus Helicopters Emergency Alert Service Bulletin No. 05A050, Revision 0, dated July 22, 2016, which contains procedures for cleaning and lubricating each bellcrank and pivot link of the life raft inflation cylinder percussion system and removing any corrosion if necessary.

**Proposed AD Requirements**

This proposed AD would require, before further flight and thereafter at intervals not exceeding 6 months, cleaning and lubricating each bellcrank and pivot link.

**Costs of Compliance**

We estimate that this proposed AD would affect 5 helicopters of U.S. Registry.

At an average labor rate of $85 per work-hour, we estimate that operators may incur the following costs in order to comply with this AD. Cleaning and lubricating both bellcranks and pivot links would require about 16 work-hours, and required materials costs would be minimal, for a cost of $1,360 per helicopter and $6,800 for the U.S. fleet per inspection cycle.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Airbus Helicopters:** Docket No. FAA–2018–0694; Product Identifier 2016–SW–068–AD.

**(a) Applicability**

This AD applies to Airbus Helicopters Model EC225 LP helicopters with a life raft installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a jammed bellcrank in a life raft jettison inflation cylinder percussion system (bellcrank). This condition could result in failure of a life raft to release in an emergency and subsequent injury to occupants.

**(c) Comments Due Date**

We must receive comments by October 9, 2018.

**(d) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(e) Required Actions**

Before further flight, and thereafter at intervals not to exceed 6 months:

(1) Clean each bellcrank and pivot link and inspect each bellcrank hole for corrosion. If there is any corrosion in a bellcrank hole:

(i) Remove the corrosion without exceeding a maximum depth of 0.1 millimeter (0.004 inch).

(ii) Clean each pivot link using 400-grain abrasive paper.

(iii) Apply corrosion protectant (Alodine 1200 or equivalent) to each bellcrank hole.

(2) Lubricate each bellcrank hole with grease before assembling the bellcrank.

**(f) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Safety Management Section, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(g) Additional Information**

(1) Airbus Helicopters Emergency Alert Service Bulletin No. 05A050, Revision 0, dated July 22, 2016, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2016–0200, dated October 11, 2016. You may view the EASA AD on the internet at *http://www.regulations.gov* in the AD Docket.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 2564 Life Raft.

Issued in Fort Worth, Texas, on July 23, 2018.

**Scott A. Horn,**

*Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2018–16638 Filed 8–8–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2018–0369; Airspace Docket No. 18–ASO–8]**

**RIN 2120–AA66**

## Proposed Amendment of Class E Airspace, Augusta, GA, and Proposed Establishment of Class E Airspace, Waynesboro, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace extending upward from 700 feet above the surface in Augusta, GA, by recognizing the name change of Augusta Regional Airport at Bush Field (formerly Augusta Regional at Bush Field Airport); removing Burke County Airport and Millen Airport from the airspace designation and establishing these two airports under Waynesboro, GA, designation; and updating the geographic coordinates of Daniel Field, Augusta, GA, and Millen Airport, Waynesboro, GA. This action would accommodate airspace reconfiguration due to the decommissioning of the Millen non-directional radio beacon (NDB) and cancellation of the NDB approach at Millen Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at these airports.

**DATES:** Comments must be received on or before September 24, 2018.

**ADDRESSES:** Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2018–0369; Airspace Docket No. 18–ASO–8, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Augusta Regional Airport at Bush Field, Augusta, GA, and establish Class E airspace at Burke County Airport and Millen Airport, Waynesboro, GA, to support IFR operations at these airports.

### Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2018–0369 and Airspace Docket No. 18–ASO–8) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number.) You may also submit comments through the internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2018–0369; Airspace Docket No. 18–ASO–8.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will

be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

**Availability and Summary of Documents for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA proposes an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet or more above the surface at Augusta Regional Airport at Bush Field, Augusta, GA, by updating the airport name (formerly Augusta Regional at Bush Field Airport); amending the geographic coordinates of Daniel Field to coincide with the FAA's aeronautical database; and by removing Burke County Airport and Millen Airport from the Augusta, GA designation and re-establishing these two airports under Waynesboro, GA designation due to the decommissioning of the Millen NDB, and cancellation of the NDB approach.

Class E airspace extending upward from 700 feet above the surface would be established at Burke County Airport, Waynesboro, GA within a 6.7-mile (from a 6.6-mile) radius of the airport.

Class E airspace extending upward from 700 feet above the surface would be established at Millen airport within a 7.4-mile (from a 7.3-mile) radius of the airport. The geographic coordinates would be adjusted to be in concert with the FAA's aeronautical database.

The changes would enhance the safety and management of IFR operations at these airports.

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**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 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 Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ASO GA E5 Augusta, GA [Amended]**

Augusta Regional Airport at Bush Field, GA
(Lat. 33°22′12″ N, long. 81°57′52″ W)
Daniel Field
(Lat. 33°28′00″ N, long. 82°02′22″ W)
Emory NDB
(Lat. 33°27′46″ N, long. 81°59′49″ W)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of Augusta Regional Airport at Bush Field, and within 3.2 miles either side of the 168° bearing from the airport extending from the 8.6-mile radius to 12.5 miles south of the airport, and within a 7-mile radius of Daniel Field Airport, and within 8 miles west and 4 miles east of the 349° bearing from the Emory NDB extending from the 7-mile radius to 16 miles north of the Emory NDB.

**ASO GA E5 Waynesboro, GA [New]**

Burke County Airport, GA
(Lat. 33°02′29″ N, long. 82°00′10″ W)
Millen Airport
(Lat. 32°53′35″ N, long. 81°57′55″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Burke County Airport, and within a 7.4-mile radius of Millen Airport.

Issued in College Park, Georgia, on July 30, 2018.

**Ryan W. Almasy,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2018–16869 Filed 8–8–18; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2017–1214; Airspace Docket No. 17–ASO–24]**

**RIN 2120–AA66**

## Proposed Amendment of Class E Airspace, Knoxville, TN; and Establishment of Class E Airspace, Madisonville, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).

**SUMMARY:** This supplemental notice of proposed rulemaking proposes to move Monroe County Airport, Madisonville, TN, associated with the Knoxville, TN, McGhee-Tyson Airport, and establish it as stand-alone airspace with its own designation. This proposal is necessary to further the safety and management of Instrument Flight Rules (IFR) operations at this airport.

**DATES:** Comments must be received on or before September 10, 2018.

**ADDRESSES:** Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Bldg. Ground Floor, Rm. W12–140, Washington, DC 20590; Telephone: 1 (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2017–1214; Airspace Docket No. 17–ASO–24, at the beginning of your comments. You may also submit and review received comments through the internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

### History

The FAA published a NPRM for Docket No. FAA–2017–1214 in the **Federal Register** (83 FR 19474; May 3, 2018) to amend Class E airspace in Knoxville, TN, by amending McGhee-Tyson Airport, Knoxville Downtown Island Airport, and University of Tennessee Medical Center Heliport. The comment period closed June 18, 2018. No comments were received. Subsequent to publication, the FAA determined that Monroe County Airport, Madisonville, TN, which is listed in the legal description for McGhee-Tyson Airport, should be removed from the Knoxville, TN, airspace designation for the Class E airspace extending upward from 700 feet above the surface, and be established under its own designation of Madisonville, TN. The FAA seeks comments on this SNPRM.

### Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the internet at *http://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–1214; Airspace Docket No. 17–ASO–24.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of SNPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Supplemental Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 by removing the Class E airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of Monroe County Airport, Knoxville, TN, from the Knoxville, TN, designation associated with McGhee-Tyson Airport. Airspace would then be established for Monroe County Airport under its own designation of Madisonville, TN, within an 8.5-mile radius of the airport.

This change does not affect the other proposed amendments as published in the NPRM.

Class E airspace designations are published in Paragraph 6005 of FAA

Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**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 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 Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ASO TN E5 Knoxville, TN [Amended]**

McGhee-Tyson Airport, TN
(Lat. 35°48′34″ N, long. 83°59′43″ W)
Gatlinburg-Pigeon Forge Airport, TN
(Lat. 35°51′28″ N, long. 83°31′43″ W)
Knoxville Downtown Island Airport, TN
(Lat. 35°57′50″ N, long. 83°52′25″ W)

That airspace extending upward from 700 feet above the surface within a 15.4-mile radius of McGhee-Tyson Airport, and within a 13-mile radius of Gatlinburg-Pigeon Forge Airport, and from the 080° bearing from Gatlinburg-Pigeon Forge Airport clockwise to the 210° bearing extending from the 13-mile radius southeast to the 33-mile radius centered on Gatlinburg-Pigeon Forge Airport, and within an 8-mile radius of Knoxville Downtown Island Airport.

**ASO TN E5 Madisonville, TN [New]**

Monroe County Airport, TN,
(Lat. 35°32′43″ N, long. 84°22′49″ W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Monroe County Airport.

Issued in College Park, Georgia, on July 30, 2018.

**Ryan W. Almasy,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2018–16865 Filed 8–8–18; 8:45 am]

BILLING CODE 4910–13–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2016–0334; FRL–9982–00—Region 4]**

## Air Plan Approval; AL, FL, GA, KY, MS, NC, SC, TN; Interstate Transport for the 2012 $PM_{2.5}$ NAAQS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of State Implementation Plan (SIP) submissions from Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee addressing the Clean Air Act (CAA or Act) interstate transport infrastructure SIP requirements for the 2012 Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an ''infrastructure SIP.'' EPA is proposing to approve the interstate transport portions of these infrastructure SIPs for the aforementioned states as demonstrating that air emissions in the states do not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

**DATES:** Comments must be received on or before August 30, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No EPA–R04–OAR–2016–0334 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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 (audio, video, etc.) 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. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

**FOR FURTHER INFORMATION CONTACT:** Richard Wong of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Wong can be reached by telephone at (404) 562–8726 or via electronic mail at *wong.richard@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 14, 2012, EPA revised the primary annual $PM_{2.5}$ NAAQS to 12.0 micrograms per cubic meter (μg/m³). *See* 78 FR 3086 (January 15, 2013). An area meets the standard if the three-year average of its annual average $PM_{2.5}$ concentration (at each monitoring site in the area) is less than or equal to 12.0 μg/m³. States were required to submit infrastructure SIP submissions for the 2012 $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015.

CAA section 110(a)(1) requires states to submit SIP revisions within three years after promulgation of a new or revised NAAQS in order to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. CAA section 110(a)(2) outlines the applicable requirements of such SIP submissions, which EPA has historically referred to as ''infrastructure SIP'' submissions. Section 110(a)(2) requires states to address basic SIP elements such as monitoring, basic program requirements (*e.g.,* permitting), and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. Thus, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs, and section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two subsections: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), require plans to prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.[1]

Through this notice, EPA is proposing to approve the prong 1 and prong 2 portions of infrastructure SIP submissions transmitted under cover letter by: Alabama (dated December 9, 2015); Florida (dated December 14, 2015); Georgia (dated December 14, 2015); Kentucky (dated February 8, 2016); Mississippi (dated December 8, 2015); North Carolina (dated December 4, 2015); South Carolina (dated December 14, 2015); and Tennessee (dated December 16, 2015), as demonstrating that these states do not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.[2] All other applicable infrastructure SIP requirements for these SIP submissions have been or will be addressed in separate rulemakings. A brief background regarding the 2012 $PM_{2.5}$ NAAQS is provided below. For comprehensive information on the 2012 $PM_{2.5}$ NAAQS, please refer to the **Federal Register** notice cited above.

## II. What approach is EPA using to evaluate these SIP submissions?

In several federal rulemakings, EPA has developed and consistently applied a framework for addressing prongs 1 and 2 of the interstate transport requirements with respect to the $PM_{2.5}$ NAAQS. That framework has four basic steps, including: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) identifying which upwind states contribute to these identified problems in amounts sufficient to warrant further review and analysis; (3) for states identified as contributing to downwind air quality problems, identifying upwind emissions reductions necessary to prevent an upwind state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS downwind; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was most recently applied with respect to $PM_{2.5}$ in the Cross-State Air Pollution Rule (CSAPR), designed to address the 1997 and 2006 $PM_{2.5}$ standards as well as the 1997 ozone standards.

EPA provided additional information in a memorandum published on March 17, 2016, titled ''Information on the Interstate Transport 'Good Neighbor' Provision of the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' (2016 memorandum).[3] The 2016 memorandum provides information relevant to EPA Regional Office review of the CAA section 110(a)(2)(D)(i)(I) ''good neighbor'' provision in infrastructure SIPs with respect to the 2012 $PM_{2.5}$ NAAQS, describes EPA's past approach to addressing interstate transport, and provides EPA's general review of relevant modeling data and air quality projections as they relate to the 2012 $PM_{2.5}$ NAAQS. This proposed rulemaking considers information provided in that memorandum.

In particular, the 2016 memorandum provides states and EPA Regional offices with information that is central to the first step in the 4-step framework for determining whether an upwind area contributes significantly to downwind air quality problems, which is the identification of the downwind receptors that may present nonattainment or maintenance problems at the appropriate time. Specifically, the 2016 memorandum provides projected future year annual $PM_{2.5}$ design values for monitors in the United States based on quality assured and certified ambient monitoring data and air quality modeling. The memorandum further describes how these projected potential design values can be used to help determine which monitors should be further evaluated to potentially address whether emissions from other states significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS at those sites. The 2016 memorandum explains that for the purposes of addressing intestate transport for the 2012 $PM_{2.5}$ NAAQS, it may be appropriate to evaluate projected air quality in 2021, which is the attainment deadline for 2012 $PM_{2.5}$ NAAQS nonattainment areas classified as moderate.

In CSAPR, EPA defined nonattainment receptors as those monitoring sites that are projected to exceed the NAAQS in the appropriate future analytic year, while maintenance

[1] EPA highlighted the statutory requirement to submit infrastructure SIPs within three years of promulgation of a new NAAQS in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 guidance). EPA has issued additional guidance documents and memoranda, including a September 13, 2013, guidance document titled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 guidance).

[2] EPA notes that the Agency may not have received the submissions until after the date of the cover letter.

[3] This memorandum is available in the docket for this rulemaking and at *https://www.epa.gov/sites/production/files/2016-05/documents/good-neighbor-memo_implementation.pdf.*

receptors are monitoring sites that are projected to have difficulty maintaining the relevant NAAQS in a scenario that considers historical variability in air quality at that receptor (81 FR 74504, 74531, October 26, 2016). Accordingly, EPA used the average projected design value to identify potential ''nonattainment'' receptors, and the maximum projected design value to identify potential ''maintenance'' receptors. Since modeling results are only available for 2017 and 2025, one way to assess potential receptors for 2021 is to assume that receptors projected to have average and/or maximum design values above the NAAQS in both 2017 and 2025 are also likely to be either nonattainment or maintenance receptors in 2021. Similarly, it may be reasonable to assume that receptors that are projected to attain the NAAQS in both 2017 and 2025 are also likely to be attainment receptors in 2021. Where a potential receptor is projected to be nonattainment or maintenance in 2017, but projected to be attainment in 2025, further analysis of the emissions and modeling may be needed to make a further judgement regarding the receptor status in 2021.

Based on this approach, according to the 2016 memorandum, all the potential nonattainment receptors and most of the maintenance receptors are in California, located in the San Joaquin Valley or South Coast nonattainment areas. However, there is also one potential maintenance receptor in Shoshone County, Idaho, and one potential maintenance receptor in Allegheny County, Pennsylvania. All other monitors in the United States that had at least one complete (and valid) $PM_{2.5}$ design value for the annual average 2012 NAAQS in the 2009–2013 period are projected to attain and maintain the 2012 $PM_{2.5}$ NAAQS in 2017 and 2025.

The 2016 memorandum also notes that because of data quality problems, nonattainment and maintenance projections were not conducted for monitors in all or portions of Florida, Illinois, Idaho (outside of Shoshone County), Tennessee and Kentucky. EPA notes, however, that data quality problems have subsequently been resolved for all of the aforementioned areas. These areas have current design values[4] below the 2012 $PM_{2.5}$ NAAQS and are expected to continue to maintain the NAAQS due to downward emission trends for nitrogen oxides ($NO_X$) and sulfur dioxide ($SO_2$) and therefore are not considered potential receptors for the purpose of interstate transport for the 2012 $PM_{2.5}$ NAAQS.

Therefore, from ''Step 1'' of this evaluation, the areas identified as ''potential downwind nonattainment and maintenance receptors'' are:

- Seventeen potential receptors in California, located in the San Joaquin Valley or South Coast nonattainment areas;
- Shoshone County, Idaho; and
- Allegheny County, Pennsylvania.

As stated above, ''Step 2'' is the identification of states contributing to downwind nonattainment and maintenance receptors, such that further analysis is required to identify necessary upwind reductions. For this step, EPA will be specifically determining if emissions from the eight southeastern states contribute to the potential downwind nonattainment and maintenance receptors identified in Step 1.

For the 1997 and 2006 $PM_{2.5}$ NAAQS, EPA used air quality modeling and an air quality threshold of one percent of the $PM_{2.5}$ NAAQS to identify upwind states that contribute to, and are thus ''linked'' to, projected nonattainment or maintenance receptors (76 FR 48237, August 8, 2011).[5] If an upwind state impacts a downwind receptor by less than the one percent threshold, EPA determined that the state is not ''linked'' and therefore does not contribute to nonattainment at the receptor. Likewise, if there is no linkage to a maintenance receptor (based, again, on an impact of less than the one percent threshold), EPA determined the upwind state does not contribute to maintenance concerns at that receptor. EPA has not set an air quality threshold for the 2012 $PM_{2.5}$ NAAQS, and does not have air quality modeling showing impacts on projected nonattainment or maintenance receptors for this NAAQS.

In the absence of contribution modeling, EPA believes that a proper and well-supported weight of evidence approach can provide sufficient information for purposes of evaluating the impact of the southeastern states on potential downwind receptors with respect to the 2012 $PM_{2.5}$ NAAQS. As part of this weight of evidence approach, EPA considered the CSAPR air quality modeling conducted for purposes of evaluating upwind state impacts on downwind air quality with respect to the 1997 annual $PM_{2.5}$ NAAQS of 15.0 μg/m³ (as well as the 2006 24-hour $PM_{2.5}$ NAAQS and 1997 Ozone NAAQS). Although not conducted for purposes of evaluating the 2012 $PM_{2.5}$ NAAQS, as noted above, this modeling can inform EPA's analysis regarding both the general magnitude of downwind $PM_{2.5}$ impacts and the downwind distance in which states may contribute to receptors with respect to the 2012 annual $PM_{2.5}$ NAAQS of 12.0 μg/m³. In particular, if the same one percent contribution threshold used in CSAPR for the 1997 and 2006 $PM_{2.5}$ NAAQS applied to the 2012 $PM_{2.5}$ NAAQS, EPA could consider the fact that a particular state's impact was below that value (that is, 0.12 μg/m³). EPA notes the Agency has not set an air quality threshold for the 2012 p.m.2.5 NAAQS and the Agency does not have air quality modeling showing impacts on projected nonattainment or maintenance receptors for the 2012 p.m.2.5 NAAQS. In addition, EPA considers geographical information (primarily the distance between the southeastern states and the downwind receptors), including whether the receptors are upwind or downwind, and other information (*e.g.,* emission trends, air quality data, regulation of $PM_{2.5}$ and precursors) provided in the states' submittals. EPA notes that no single piece of information, by itself, is fully conclusive. Instead, the total weight of all the evidence taken together is used to evaluate significant contributions to nonattainment or interference with maintenance of the 2012 $PM_{2.5}$ NAAQS in another state.

EPA addresses Step 1 of the framework in section III, below, by discussing each of the potential downwind nonattainment and maintenance receptors. EPA mentions the California and Idaho receptors only briefly because they have little relevance for the eight southeastern states, as explained below. In section IV, below, EPA addresses Step 2 of the framework by discussing the southeastern states' impacts on the potential receptors. This proposed rulemaking considers the analyses from Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee as well as additional supplemental analysis

[4] Current design values include the 2015–2017 available and certified data that states submitted to EPA on May 1, 2018, through the Air Quality System.

[5] The 2012 contribution modeling is documented in EPA's ''Air Quality Modeling Final Rule Technical Support Document'' (June 2011) located in the docket for this proposed rulemaking and at *https://www.epa.gov/csapr/cross-state-air-pollution-final-and-proposed-rules titled Contributions of 8-hour ozone, annual $PM_{2.5}$, and 24-hour $PM_{2.5}$ from each state to each monitoring site* (*Excel*). EPA used the CAMx version 5.3 to simulate ozone and $PM_{2.5}$ concentrations for the 2005 base year and the 2012 and 2014 future year scenarios. CAMx was also used for the 2012 source apportionment modeling to quantify interstate transport of ozone and $PM_{2.5}$.

conducted by EPA during review of these submittals.[6]

## III. Potential Receptors

As noted above, in Step 1 of the framework, EPA identifies the potential downwind nonattainment and maintenance receptors.

### *A. California*

California has seventeen potential receptors, located in the San Joaquin Valley or South Coast nonattainment areas. However, the nearest southeastern state is well over 1,000 miles—and downwind—from California. With this large distance and a general prevailing west to east wind flow, there is no evidence that any southeastern state will impact the California potential receptors, and as a result, EPA concludes that sources in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee do not significantly contribute to nonattainment or interfere with maintenance.

### *B. Shoshone County, Idaho*

Shoshone County, Idaho, has a potential maintenance receptor, but as with California, this receptor is well over 1,000 miles, and upwind from, the nearest southeastern state. With this distance and prevailing wind direction, there is no evidence that any southeastern state will impact this area, and as a result, EPA concludes that sources in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee do not significantly contribute to nonattainment or interfere with maintenance.

### *C. Allegheny County, Pennsylvania*

In the eastern United States, the modeling results provided in the 2016 memorandum show that the Liberty monitor (AQS: 42–003–0064), located in Allegheny County, Pennsylvania (hereinafter referred to as the Liberty monitor or Allegheny County monitor), was projected to be above the 2012 $PM_{2.5}$ NAAQS in the 2017 modeling (as a maintenance receptor). This monitor is, consistent with the projection, currently violating the 2012 $PM_{2.5}$ NAAQS based on available and certified 2015–2017 ambient data measuring 13.0 μg/m$^3$. However, the monitor is projected to both attain and maintain the NAAQS in 2025. The 2016 memorandum indicates that under such a condition (where EPA's photochemical modeling indicates an area will attain and maintain the 2012 $PM_{2.5}$ NAAQS in 2025 but not in 2017) further analysis of the site should be performed to determine if the site may be a nonattainment or maintenance receptor in 2021. A simple linear interpolation between the 2017 and 2025 projected design values for the Allegheny County monitor leads to a projected 2021 design value of 11.42 μg/m$^3$ and a maximum design value of 11.91 μg/m$^3$, which are both below the 2012 $PM_{2.5}$ NAAQS, indicating the monitor is likely to attain the standard by the attainment deadline of 2021.[7]

In addition to the modeling information, emissions and air quality data trends can help corroborate the interpolated 2021 values. Over the last decade, local and regional emissions reductions of primary $PM_{2.5}$, $SO_2$, and $NO_X$, have led to large reductions in annual $PM_{2.5}$ design values in Allegheny County, Pennsylvania. The 2015–2017 annual average $PM_{2.5}$ design value for the Liberty monitor is 13.0 μg/m$^3$, which is above the standard. Even so, expected emissions reductions in the next four years will lead to additional reductions in measured $PM_{2.5}$ concentrations at the Liberty monitor.

There are both local and regional components to the measured $PM_{2.5}$ levels in Allegheny County and the greater Pittsburgh area. Previous CSAPR modeling showed that regional precursor emissions from upwind states contribute to $PM_{2.5}$ nonattainment at the Liberty monitor. In recent years, large $SO_2$ and $NO_X$ reductions from power plants have occurred in Pennsylvania and states upwind from the greater Pittsburgh region. Projected power plant closures and additional emission controls in upwind states will help further reduce both direct $PM_{2.5}$ and $PM_{2.5}$ precursors. Regional emissions reductions will continue to occur from current on-the-books federal and state regulations such as the federal on-road and non-road vehicle programs and various rules for major stationary emission sources. Additionally, local reductions to both direct $PM_{2.5}$ and $SO_2$ emissions are expected and should also contribute to a further decline in Allegheny County's monitored $PM_{2.5}$ concentrations. The Allegheny $SO_2$ SIP also projects lower $SO_2$ emissions resulting from vehicle fuel standards, reductions in general emissions due to declining population in the Greater Pittsburgh region, and several shutdowns of significant sources of emissions in Allegheny County.

In addition, in a supplemental analysis for this proposed rulemaking, EPA conducted a long-term trend analysis of the $PM_{2.5}$ ambient air quality data using the Mann-Kendall trend test to detect increasing or decreasing trends at $PM_{2.5}$ monitoring sites in Pennsylvania (Allegheny, Delaware and Lebanon counties), Ohio (Cuyahoga and Lorain Counties)[8] and southeastern Region 4 states as an additional weight of evidence. EPA found downward trends in all of those counties during the 2008–2017 time period. This trends analysis is discussed in the Technical Support Document (TSD) entitled *Annual Fine Particulate Matter* ($PM_{2.5}$) *Trend Analysis* found in the docket for this proposed action (Docket ID: EPA–R04–OAR–2016–0334). Not only have emissions trended downward in Allegheny County because of reductions from CSAPR implementation across the CSAPR states, emissions have trended downward nearly universally among PM air quality monitors in CSAPR states.[9] This trend is reinforced by the air quality data presented in the 2016 memorandum.

Thus, EPA's modeling projections, the recent downward trends in local and upwind states' emissions, the expected downward trend in emissions between 2017 and 2021 and the downward trend in upwind monitored $PM_{2.5}$ sites all indicate that the Liberty monitor will attain and be able to maintain the 2012 $PM_{2.5}$ NAAQS by 2021. Accordingly, EPA proposes to determine that Allegheny County is unlikely to have either nonattainment or maintenance problems in 2021 and therefore should not be considered a receptor for

[6] Because EPA proposes to find that Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, individually, does not have emissions that contribute to any nonattainment or maintenance receptor in any other state, it is not necessary to evaluate steps 3 and 4 of the analytical framework described above.

[7] As noted in the 2016 memorandum, additional information about emissions and trends may be needed to further support this conclusion. Provided in the docket to this proposed rulemaking are the infrastructure SIP submissions which include information related to air quality data and trends in all states that are the subject of this proposed rulemaking (Docket ID: EPA–R04–OAR–2016–0334).

[8] EPA's 2016 memorandum does not identify the Cleveland, Ohio Area (Cuyahoga and Lorain counties), Lebanon and Delaware counties in Pennsylvania as a projected nonattainment or maintenance area in 2017 or 2025; therefore, these areas were not considered potential receptors for purposes of interstate transport the 2012 $PM_{2.5}$ standard. Furthermore, monitors in the Cuyahoga (Harvard Yard monitor AQS ID: 39–035–0065) and Lorain (AQS ID: 39–093–3002) are measuring below the annual standard at 11.7 μg/m$^3$ and 7.6 μg/m$^3$ respectively, based on 2015–2017 data. Similarly, monitors in Delaware and Lebanon counites are also measuring below the 2012 $PM_{2.5}$ standard based on 2015–2017 design values.

[9] As described in the TSD, EPA found the same trend during 2008–2017 in Cuyahoga and Lancaster Counties in Ohio, which are near Allegheny County in Pennsylvania.

purposes of interstate transport for the 2012 $PM_{2.5}$ NAAQS.

## IV. EPA's Review of How the Southeast States Addressed Prongs 1 and 2

The following discussion summarizes EPA's individual analyses for the portions of submissions from Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee intended to meet the prong 1 and prong 2 requirements of 110(a)(2)(D)(i)(I) for the 2012 $PM_{2.5}$ NAAQS. EPA's analysis is based on the supplemented CSAPR framework evaluation and information included in the states' submissions as a collective weight of evidence demonstration. The analysis focuses on evaluating whether there will be any downwind maintenance or nonattainment receptors in 2021, as discussed above, and the extent, if any, to which emissions from each of the eight states may impact any such downwind receptor. EPA evaluated the contribution modeling conducted in support of CSAPR (CSAPR contribution modeling) to determine if any of the eight southeastern states were projected to contribute greater than one percent of the annual standard (0.12 μg/m³) at certain downwind receptors with potential nonattainment/maintenance issues.[10] For Alabama, Florida, Georgia, Mississippi, North Carolina and South Carolina, there are no impacts at any potential downwind receptor by at least that amount, which EPA considers an important indication that none of those states will contribute to such a receptor. EPA also considered information provided in the individual 2012 $PM_{2.5}$ infrastructure SIP submissions and other information.

### *A. Alabama*

Alabama concluded in its December 9, 2015, $PM_{2.5}$ infrastructure SIP submission that it does not contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state for the following reasons: (1) There are no designated $PM_{2.5}$ nonattainment areas in Alabama or in surrounding states; (2) available monitoring data in Alabama and the surrounding states for 2012–2014 show design values below the standard; (3) emissions of the PM precursors $NO_X$ and $SO_2$ from point sources in Alabama have decreased by 10 and 46 percent, respectively, for the years 2009–2013; and (4) there are federal and SIP-approved state regulations in place to control $PM_{2.5}$ precursors. Based on the rationale discussed below, EPA proposes to approve Alabama's SIP submission on grounds that it has adequate provisions to ensure that emissions from sources within the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

Alabama's submission examined available $PM_{2.5}$ monitoring data from 2012–2014 in the State and surrounding states. According to this data, the highest design value during this period was 11.6 μg/m³ at the North Birmingham monitor (AQS: 01–073–0023) in Alabama. Available quality-assured, certified data for 2015–2017 in Alabama and in the neighboring states is also below the standard. The highest valid 2015–2017 design value in Alabama was 11.0 μg/m³ at the Arkadelphia near-road site (01–073–2059) in Jefferson County. The highest valid design values in the neighboring states for 2015–2017 was 10.5 μg/m³ at the near-road site near Georgia Institute of Technology Fulton County, Georgia (13–121–0056). EPA's 10-year trend analysis indicates Alabama monitors generally exhibited a decreasing trend in $PM_{2.5}$ concentrations from 2008 to 2017. More information on air quality trends in Alabama are provided in the TSD included in the docket for this proposed rulemaking.

The $NO_X$ and $SO_2$ point source emissions data provided in Alabama's submittal show that these emissions have decreased in the State by 10 and 46 percent, respectively, for 2009–2013. Furthermore, as noted in the submittal, several coal-fired electricity generating units (EGUs) in Alabama were scheduled for retirement in 2016, further reducing $NO_X$ and $SO_2$ emissions.[11]

In its submittal, Alabama identifies SIP-approved regulations at Alabama Administrative Code Chapter 335–3–8 that require controls and emission limits for certain $NO_X$ emitting sources in the State. These regulations include the SIP-approved portion of the $NO_X$ SIP call that requires certain $NO_X$ emitting sources to comply with a capped $NO_X$ emission budget. The State also identifies SIP-approved regulations at Alabama Administrative Code Chapter 335–3–5 that require controls and emission limits for certain $SO_2$ emitting sources in the State. Alabama further notes that it has implemented several federal programs that, while not relied upon to address its ''good neighbor'' obligations for the 2012 $PM_{2.5}$ NAAQS, have reduced $PM_{2.5}$ precursor emissions within the State. Alabama also controls certain sources that contribute to $PM_{2.5}$ concentrations in ambient air through its SIP-approved permitting regulations at Alabama Administrative Code Chapter 335–3–14. These permitting requirements help ensure that no new or modified sources in the State subject to these permitting regulations will contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS.

EPA evaluated whether there are maintenance or nonattainment receptors for 2021 to which Alabama's emissions are linked. As noted in section III.C above, EPA's 2016 memorandum identifies the Allegheny County Liberty monitor (AQS ID: 42–003–0064) as a potential maintenance receptor in 2017, but indicates that it is likely to attain and maintain the annual standard in 2021. EPA's review of the CSAPR contribution modeling indicates that Alabama will not contribute greater than one percent of the 2012 standard (or 0.12 μg/m³) to the Liberty monitor in Allegheny County. This result is consistent with the fact that the monitor is approximately 600 miles northeast of the Alabama border.

Based on the weight of the evidence presented above, EPA proposes to approve Alabama's SIP submission on grounds that it adequately addresses the State's 110(a)(2)(D)(i)(I) good neighbor obligation for the 2012 $PM_{2.5}$ standard and that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

### *B. Florida*

Florida concluded in its December 14, 2015, $PM_{2.5}$ infrastructure SIP submission that emissions from sources in Florida do not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state for the following reasons: (1) There are no designated $PM_{2.5}$ nonattainment areas in

[10] The 2012 contribution modeling is documented in EPA's ''Air Quality Modeling Final Rule Technical Support Document'' (June 2011) located in the docket for this proposed rulemaking and at *https://www.epa.gov/csapr/cross-state-air-pollution-final-and-proposed-rules titled Contributions of 8-hour ozone, annual $PM_{2.5}$, and 24-hour $PM_{2.5}$ from each state to each monitoring site (Excel)*. EPA used the CAMx version 5.3 to simulate ozone and $PM_{2.5}$ concentrations for the 2005 base year and the 2012 and 2014 future year scenarios. CAMx was also used for the 2012 source apportionment modeling to quantify interstate transport of ozone and $PM_{2.5}$.

[11] EPA identified four EGUs in Alabama that have retired units in the state including Tennessee Valley Authority (TVA) Colbert Fossil Plant, Colbert County, AL (units 1–5 retired April 30, 2016); Alabama Power Plant Barry, Mobile County, AL (unit 3 retired on August 24, 2015), TVA Widows Creek Fossil Plant, Jackson County, AL (units 1–6 retired June 25, 2014; units 7 and 8 retired April 30, 2016) and Alabama Power Plant Gorgas, Walker County, AL (retired units 6 and 7 on August 24, 2015). *Source https://www.epa.gov/airmarkets/business-center.*

Florida or in surrounding states; (2) $PM_{2.5}$ concentrations in the Southeast are in compliance with the standard; (3) modeling conducted by EPA in support of CSAPR indicates that Florida's contribution to any designated 2012 $PM_{2.5}$ nonattainment area is less than 0.1 percent of the standard; (4) emissions of $NO_X$ and $SO_2$ in Florida have decreased over the past decade; and (5) Florida has SIP-approved permitting regulations in place addressing certain activities that contribute to $PM_{2.5}$ concentrations in ambient air. Based on the rationale discussed below, EPA proposes to approve Florida's SIP submission on grounds that it has adequate provisions to ensure that emissions from sources within the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

Florida's submittal considered EPA's CSAPR contribution modeling and concluded that Florida's contribution to the designated nonattainment areas for the 2012 $PM_{2.5}$ NAAQS is less than 0.013 μg/m³ (approximately 0.1 percent of the standard). The State's submittal also notes that $NO_X$ and $SO_2$ emissions in Florida have decreased by 50 percent and 70 percent, respectively, over the past decade. Florida states that these reductions lower Florida's potential impact on $PM_{2.5}$ concentrations in other states.

Florida also identified SIP-approved regulations in the Florida Administrative Code, including Chapters 62–210, 62–212, and 62–296, that provide for the implementation of a permitting program required under Title I, Parts C and D of the CAA for certain activities that contribute to ambient $PM_{2.5}$ concentrations. These permitting requirements help ensure that no new or modified sources in the State subject to these permitting regulations will contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS. Chapter 62–296 also contains additional SIP-approved regulations that control certain sources that contribute to $PM_{2.5}$ concentrations in the ambient air.

Furthermore, as Florida notes in its submittal, the nearest designated nonattainment area is over 1,000 kilometers (or 621.371 miles) from its northern border, and most of the direct and precursor $PM_{2.5}$ emissions in the State are located in central and south Florida. Available quality-assured, certified data for 2015–2017 in Florida and in the neighboring states is also below the standard. The highest valid 2015–2017 design value in Florida was 8.0 μg/m³ at the Sydney site (AQS ID: 12–057–3002) in Hillsborough County. The highest valid design value in the neighboring states was 11.0 μg/m³ at the Arkadelphia near-road site (AQS ID: 01–073–2059) in Jefferson County, Alabama. EPA's 10-year trend analysis indicates that Florida monitors generally exhibited a decreasing trend in $PM_{2.5}$ concentrations from 2008 to 2017. More information on air quality trends in Florida are provided in the TSD included in the docket for this proposed rulemaking.

EPA's supplemental analysis focused on whether there are maintenance or nonattainment receptors for 2021 to which Florida's emissions are linked. As noted in section III.C above, EPA's 2016 memorandum identifies the Allegheny County Liberty monitor (AQS ID: 42–003–0064) as a potential maintenance receptor in 2017, but indicates that it is likely to attain and maintain the annual standard in 2021. EPA's review of the CSAPR contribution modeling indicates that Florida's contribution to the Liberty monitor is less than one percent of the 2012 $PM_{2.5}$ NAAQS which is consistent with Florida's determination that sources in the State will not contribute to greater than one percent of the standard. In addition, the Allegheny County Liberty monitoring site is approximately 700 miles from the Florida state border.

Based on weight of the evidence presented above, EPA proposes to approve Florida's SIP submission on grounds that it addresses the State's 110(a)(2)(D)(i)(I) good neighbor obligation for the 2012 $PM_{2.5}$ standard and that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

*C. Georgia*

Georgia concluded in its December 14, 2015, $PM_{2.5}$ infrastructure SIP submission that it does not contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state for the following reasons: (1) Modeling conducted by EPA in support of CSAPR indicates that Georgia's contribution to any designated 2012 $PM_{2.5}$ nonattainment area is less than one percent of the standard; and (2) Georgia has SIP-approved permitting regulations that control certain sources that contribute to $PM_{2.5}$ concentrations in ambient air. Furthermore, there are currently no designated nonattainment areas in Georgia or in the surrounding states. Based on the rationale discussed below, EPA proposes to approve Georgia's SIP submission on grounds that it has adequate provisions to ensure that emissions from sources within the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

Based on Georgia's review of the CSAPR contribution modeling, the State concluded that its maximum potential contribution to the designated nonattainment areas for the 2012 $PM_{2.5}$ NAAQS is less than 0.081 μg/m³ (less than 0.7 percent of the standard), and therefore, sources in the State do not contribute to downwind receptors with potential downwind nonattainment and/or maintenance issues. In addition, Georgia identifies SIP-approved permitting regulations in Georgia Rules for Air Quality 391–3–1–.02 and –.03 that implement the permitting programs required under Title I, Parts C and D of the CAA for certain activities that contribute to ambient $PM_{2.5}$ concentrations. These permitting requirements help ensure that no new or modified sources in the State subject to these permitting regulations will contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS. Georgia also identified several SIP-approved Rules that require enforceable limits and control measures for $PM_{2.5}$ and precursor emissions within the State as well as other federally-enforceable measures not part of the approved SIP that require reduction in $SO_2$ emission for certain sources in the State. Available quality-assured, certified data for 2015–2017 indicate that the highest design value in Georgia was 10.5 μg/m³ at the near road site by Georgia Institute of Technology in Fulton County (AQS ID: 13–121–0056). The highest design value in the surrounding states was 11.0 μg/m³ at the Arkadelphia near-road site in Jefferson County, Alabama (AQS ID: 01–073–2059). EPA's 10-year trend analysis indicated that Georgia monitors generally exhibited a decreasing trend in $PM_{2.5}$ concentrations from 2008 to 2017. More information on air quality trends in Georgia are provided in the TSD included in the docket for this proposed rulemaking.

EPA's supplemental analysis focused on whether there are maintenance or nonattainment receptors for 2021 to which Georgia's emissions are linked. As noted in section III.C above, EPA's 2016 memorandum identifies the Allegheny County Liberty monitor (AQS ID: 42–003–0064) as a potential maintenance receptor in 2017, but indicates that it is likely to attain and maintain the annual standard in 2021. Georgia's review of the CSAPR contribution modeling, as provided in

the State's 2015 SIP submittal, indicates that sources in the State will contribute less than one percent of the 2012 standard to the Liberty monitor which is consistent with EPA's review of the projected contribution modeling. In addition, the Allegheny Liberty monitor (AQS ID: 42–003–0064) is approximately 500 miles away from the Georgia state border.

Based on the weight of the evidence presented above, EPA proposes to approve Georgia's SIP submission on grounds that it adequately addresses the State's 110(a)(2)(D)(i)(I) good neighbor obligation for the 2012 $PM_{2.5}$ standard and that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

*D. Kentucky*

Kentucky concluded in its February 8, 2016, $PM_{2.5}$ infrastructure SIP submission that the Commonwealth will not contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state for the following reasons: (1) Available monitoring data in Kentucky and in the surrounding states for 2012–2014 (with the exception of the Cleveland, Ohio nonattainment area) have shown design values below the standard; (2) air quality monitors between Kentucky and the Cleveland Area (the only designated 2012 $PM_{2.5}$ nonattainment area in a neighboring state) show attainment from 2012–2014; and (3) Kentucky has SIP-approved regulations to assure that the State is not interfering with attainment or maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state. Based on the rationale discussed below, EPA proposes to approve Kentucky's SIP submission on grounds that it has adequate provisions to ensure that emissions from sources within the Commonwealth will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

Kentucky's SIP submission indicates that the most significant sources of $PM_{2.5}$ and its precursors are coal-fired power plants, industrial boilers, and other combustion sources.

Kentucky's 2015 infrastructure SIP submission identifies several SIP-approved regulations that regulate sources of $PM_{2.5}$ precursor emissions (as well as other federally-enforceable measures not part of the federally-approved SIP); reductions in $PM_{2.5}$ precursor emissions in Kentucky due to permanent and enforceable emission reduction measures; and the downward trend of $PM_{2.5}$ monitored concentrations in Kentucky and surrounding states.[12]

Kentucky identifies SIP-approved permitting regulations at 40 Kentucky Administrative Rules (KAR) 51:017 and 51:052 used to control certain sources that contribute to $PM_{2.5}$ concentrations in ambient air. These permitting requirements help ensure that no new or modified sources in the Commonwealth subject to these permitting regulations will significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS. Kentucky also controls emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors at certain sources through source-specific measures pursuant to other SIP-approved regulations such as 40 KAR 51:150 ($NO_X$ requirements for stationary internal combustion engines). Kentucky also identifies CSAPR as yielding residual $NO_X$ and $SO_2$ emission reductions.

Kentucky examined available $PM_{2.5}$ monitoring data from 2012–2014 in the Commonwealth and in surrounding states. According to this data, the highest valid design values in Kentucky and surrounding states (excluding the Cleveland Area) was 11.8 μg/m³ at the W. 18th St. monitor in Marion County, Indiana. Available quality-assured, certified data for 2015–2017 in Kentucky and the surrounding states are also below the standard. The highest design value in Kentucky was 9.7 μg/m³ at the Southwick (AQS ID: 21–111–0043) site in Jefferson County. The highest valid design value in the neighboring states was 11.7 μg/m³ at the Harvard Yard monitor in Cuyahoga County, Ohio, within the Cleveland Area. Furthermore, the monitors between the Commonwealth and the Cleveland Area show attaining 2015–2017 design values. EPA's 10-year trend analysis indicates that Kentucky monitors generally exhibited a decreasing trend in $PM_{2.5}$ concentrations from 2008 to 2017. More information on air quality trends in Kentucky are provided in the TSD included in the docket for this proposed rulemaking.

EPA's supplemental analysis focused on whether there are maintenance or nonattainment receptors for 2021 to which source emissions in Kentucky emissions are linked. As discussed in section III.C above, EPA's 2016 memorandum identifies the Allegheny County Liberty monitor (AQS ID: 42–003–0064) as a potential maintenance receptor in 2017, but indicates that the monitor is likely to attain and maintain by 2021. EPA's review of the CSAPR contribution modeling indicates that sources in the Commonwealth contribute 0.273 μg/m³ to the Liberty monitoring site which is greater than one percent of the 2012 standard. EPA notes that current $SO_2$ emissions in Kentucky are 204,812 tons,[13] lower than modeled $SO_2$ emissions of 520,546 tons for the CSAPR.[14] Kentucky's highest contribution when considering all Allegheny monitors is at the Liberty monitor. The Allegheny County Liberty monitoring site is approximately 400 miles upwind from the Kentucky border.

As discussed in section III.C, above, local and regional emissions reductions of primary $PM_{2.5}$, $SO_2$, and $NO_X$, have led to large reductions in annual $PM_{2.5}$ design values in Allegheny County, Pennsylvania. Based on EPA's modeling projections, the recent downward trend in local and regional emissions reductions, the expected continued downward trend in emissions between 2017 and 2021, and the downward trend in monitored $PM_{2.5}$ concentrations, EPA expects that the Liberty monitor will attain and be able to maintain the 2012 $PM_{2.5}$ NAAQS by the 2021 attainment deadline without additional $PM_{2.5}$ precursor emission reductions from Kentucky. As mentioned above, the 2015–2017 annual average $PM_{2.5}$ design value for the Liberty monitor is 13.0 μg/m³, which is above the 2012 $PM_{2.5}$ standard. Even so, expected emissions reductions in the next four years will lead to additional reductions in measured $PM_{2.5}$ concentrations at the Liberty monitor. Therefore, EPA proposes to determine that additional emission reductions from sources in the Commonwealth are not necessary to satisfy the Commonwealth's obligations under section 110(a)(2)(D)(i)(I) of the CAA. For these reasons, EPA proposes to determine that Kentucky's emissions will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS for Allegheny County, Pennsylvania.

[12] Kentucky also identifies the Cleveland Area (Cuyahoga and Lorain Counties) as the only $PM_{2.5}$ nonattainment area in a neighboring state. This area is approximately 200 miles from the Kentucky border. The Cuyahoga County Harvard Yard monitor (AQS ID: 39–035–0065) and Lorain monitor (AQS ID: 39–093–3002) in the Cleveland Area are both are measuring below the annual standard at 11.7 μg/m³ and 7.6 μg/m³ respectively, based on 2015–2017 air quality data. EPA's 2016 memorandum does not identify the Cleveland Area as a projected potential nonattainment or maintenance area in 2017 or 2025. Therefore, this area was not considered a downwind receptor for the 2012 $PM_{2.5}$ standard.

[13] The 2014 NEI v2 emissions are available in the docket for this rulemaking.

[14] The CSAPR modeled $SO_2$ emissions numbers, for the 2012 contribution case, can be found in this TSD in Table 7–4 at *https://www.epa.gov/sites/production/files/2017-06/documents/epa-hq-oar-2009-0491-4522.pdf*.

Based on the weight of the evidence presented above, EPA proposes to approve Kentucky's SIP submission on grounds that it adequately addresses the Commonwealth's 110(a)(2)(D)(i)(I) good neighbor obligation for the 2012 $PM_{2.5}$ standard and that the Commonwealth will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

*E. Mississippi*

Mississippi concluded in its December 8, 2015, $PM_{2.5}$ infrastructure SIP submission that it does not contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state for the following reasons: (1) There are no designated $PM_{2.5}$ nonattainment areas in Mississippi or in surrounding states; (2) available monitoring data in Mississippi and in the surrounding states for 2011–2014 show annual average concentrations below the standard; and (3) there are SIP-approved state regulations in place to control emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors. Based on the rationale discussed below, EPA proposes to approve Mississippi's SIP submission on grounds that it has adequate provisions to ensure that emissions from sources within the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

Mississippi's 2015 submittal identifies SIP-approved permitting regulations at Mississippi Administrative Code APC–S–2 used to control sources of precursor emissions that contribute to $PM_{2.5}$ concentrations in ambient air. These permitting requirements help ensure that no new or modified sources in the State subject to these permitting regulations will significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS.

Mississippi's SIP submittal also reviewed available $PM_{2.5}$ monitoring data from 2009–2014 in the State and in surrounding states. The State concluded that design values during this period were generally trending downward and the highest design value for 2012–2014 was 11.3 μg/m$^3$ at a monitor in Alabama. EPA's review of available quality-assured, certified data for 2015–2017 determined that the highest design value in Mississippi was 8.9 μg/m$^3$ at the Hattiesburg, Mississippi site (AQS ID: 28–035–0004). In the neighboring states, the highest valid 2015–2017 design value was 11.0 μg/m$^3$ at the Arkadelphia near-road site in Jefferson County, Alabama (AQS ID: 01–073–2059). EPA's 10-year trend analysis indicated that Mississippi monitors generally exhibited a decreasing trend in $PM_{2.5}$ concentrations from 2008 to 2017.[15] More information on air quality trends in Mississippi are provided in the TSD included in the docket for this proposed rulemaking.

EPA's supplemental analysis focused on whether there are maintenance or nonattainment receptors for 2021 to which Mississippi's emissions are linked. As noted in section III.C above, EPA's 2016 memorandum identifies the Allegheny County Liberty monitor (AQS ID: 42–003–0064) as a potential maintenance receptor in 2017, but indicates that it is likely to attain and maintain the annual standard in 2021. EPA's review of the CSAPR contribution modeling indicates that Mississippi does not contribute greater than one percent of the 2012 standard to that site. This is consistent with the fact that the monitor is approximately 600 miles northeast of the Mississippi state border.

Based on the weight of the evidence presented above, EPA proposes to approve Mississippi's SIP submission on grounds that it adequately addresses the State's 110(a)(2)(D)(i)(I) good neighbor obligation for the 2012 $PM_{2.5}$ standard and that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

*F. North Carolina*

North Carolina concluded in its December 4, 2015, $PM_{2.5}$ infrastructure SIP submission that it does not contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state for the following reasons: (1) There are no designated $PM_{2.5}$ nonattainment areas in North Carolina or in surrounding states; (2) available monitoring data in North Carolina and in the surrounding states for 2011–2014 show design values below the standard; (3) $PM_{2.5}$, $NO_X$, and $SO_2$ emissions in the State have declined since 1996; and (4) there are federal and SIP-approved state regulations in place to ensure that North Carolina is not interfering with attainment or maintenance of the standard in downwind states. Based on the rationale discussed below, EPA proposes to approve North Carolina's SIP submission on the grounds that it has adequate provisions to ensure that emissions from sources within the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

The State's implementation plan submittal reviewed emissions data and projections from 1996–2017 and concluded that $PM_{2.5}$, $NO_X$, and $SO_2$ emissions within North Carolina declined by approximately 36, 48, and 80 percent, respectively, from 1996–2011 and are projected to decrease by an additional 31, 39, and 50 percent, respectively, from 2011–2017 due to state and federal programs.[16] The State estimates that emissions of these pollutants will continue to decrease beyond 2017.

North Carolina reviewed EPA's air quality modeling analyses conducted in support of the decision to revise the annual $PM_{2.5}$ standard to 12.0 μg/m$^3$ where EPA concluded that all states downwind of North Carolina would attain the 2012 $PM_{2.5}$ NAAQS by 2020; one year prior to the 2021 attainment year for the three areas in Pennsylvania designated as moderate nonattainment areas (see Table 2 in North Carolina's December 4, 2015 submittal). North Carolina does not believe that it has any significant contribution to annual $PM_{2.5}$ concentrations in these areas in Pennsylvania because the entire state of North Carolina and the states between North Carolina and Pennsylvania (*i.e.,* Virginia, West Virginia and Maryland) were attaining the annual standard at the time of the State's submittal in 2015.

North Carolina's SIP submission also cites to a number of State regulations that address additional control measures, means, and techniques to reduce relevant emissions in North Carolina.[17] Several of these measures,

[15] Due to incomplete data as a result of quality assurance findings in a Technical Systems Audit conducted by the EPA, none of the $PM_{2.5}$ monitoring sites in Mississippi collected enough data to produce a valid annual mean during 2012–2014. Despite this missing data, in EPA's assessment, the trends analysis still provides informative results for the Mississippi sites. Most of the sites did collect complete annual means during the most recent years, 2015, 2016, and 2017. Also, many of the sites collected five, six, or seven valid annual means during the 2008–2017 period, which met the minimum completeness criteria developed for the trends analysis.

[16] See Table 3—*Trends in North Carolina's Annual Statewide Emissions (Thousand Tons/Year)* in North Carolina's 2015 SIP submission. For 1990 through 2011, emissions are from the EPA's National Emissions Inventory located at *http://www3.epa.gov/ttn/chief/eiinformation.html.* For 2013, emissions were estimated by the State. For 2017, emissions are from the EPA's 2017 v6.2 modeling platform emissions summary, located at: *ftp://ftp.epa.gov/EmisInventory/2011v6/v2platform/reports/2017eh_cb6v2_v6_11g_state_sector_totals.xlsx.*

[17] North Carolina identifies a number of SIP-approved state regulations that control emissions or $PM_{2.5}$ precursors within the State as well as some

means, and techniques are SIP-approved, such as 15A North Carolina Administrative Code (NCAC) 02D.1409 (addressing $NO_X$ emissions from certain stationary internal combustion engines) and the $NO_X$ and $SO_2$ emissions caps under the State's 2002 Clean Smokestack Act (CSA)[18] that apply to certain coal-fired power plants in the State. North Carolina also identifies a number of federal programs such as CSAPR that, while not relied upon to address its ''good neighbor'' obligations for the 2012 $PM_{2.5}$ NAAQS, reduce emissions of $PM_{2.5}$ and/or $PM_{2.5}$ precursors.[19]

In addition, North Carolina examined available $PM_{2.5}$ monitoring data from 2011–2014 in the State and surrounding states. According to this data, the highest valid design value for 2012–2014 was 10.9 μg/m³ at the Macon Allied monitor in Bibb County, Georgia (AQS ID: 13–021–0007). The highest valid 2015–2017 design values in North Carolina is 8.8 μg/m³ at two sites (Durham Armory site in Durham County; AQS ID: 37–063–0015, Millbrook School site in Wake County; AQS ID: 37–183–0014). The highest valid design value in the neighboring states was 10.5 μg/m³ at the near road site by Georgia Institute of Technology in Fulton County, Georgia (AQS ID: 13–121–0056). Also, EPA's 10-year trend analysis indicates that North Carolina monitors generally exhibited a decreasing trend in $PM_{2.5}$ concentrations from 2008 to 2017. More information on air quality trends in North Carolina are provided in the TSD included in the docket for this proposed rulemaking.

EPA's supplemental analysis focused on whether there are maintenance or nonattainment receptors for 2021 to which source emissions in North Carolina emissions are linked. As noted in section III.C above, EPA's 2016 memorandum identifies the Allegheny County Liberty monitor (AQS ID: 42–003–0064) as a potential maintenance receptor in 2017, but indicates that it is likely to attain and maintain the annual standard in 2021. EPA's review of the CSAPR contribution modeling indicates that North Carolina does not contribute greater than one percent of the 2012 standard.

Based on the weight of the evidence presented above, EPA proposes to approve North Carolina's SIP submission on grounds that it adequately addresses the State's 110(a)(2)(D)(i)(I) good neighbor obligation for the 2012 $PM_{2.5}$ standard and that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

*G. South Carolina*

South Carolina concluded in its December 14, 2015, $PM_{2.5}$ infrastructure SIP submission that it does not contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state for the following reasons: (1) There are no designated $PM_{2.5}$ nonattainment areas in South Carolina or in surrounding states; (2) available monitoring data in South Carolina for 2010–2014 show design values below the standard and $PM_{2.5}$ concentrations have declined over the majority of the Southeast since 2006; (3) estimated $PM_{2.5}$ emissions from title V sources in the State have declined overall from 2003–2014;[20] and (4) there are SIP-approved state regulations in place to control $PM_{2.5}$ and $PM_{2.5}$ precursor emissions. Based on the rationale discussed below, EPA proposes to approve South Carolina's SIP submission on grounds that it has adequate provisions to ensure that emissions from sources within the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

South Carolina's SIP submission identifies SIP-approved permitting regulations at South Carolina Code of Regulations 61–62.5, Standard No. 7 and Standard No. 7.1 used to control certain sources that contribute to $PM_{2.5}$ concentrations in ambient air. These permitting requirements help ensure that no new or modified sources in the State subject to these permitting regulations will significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS. South Carolina also controls emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors at certain sources through source-specific measures pursuant to other SIP-approved regulations such as Regulation 61–62.2 (prohibitions on open burning), Regulation 61–62.5, Standard No. 1 (emissions from fuel burning operations), and Regulation 61–62.6 (control of fugitive particulate matter).

In addition, South Carolina provided estimated $PM_{2.5}$ emissions data for title V sources in the State showing that these emissions have decreased by approximately 66 percent from 2003–2014, and the State reports that $PM_{2.5}$ emissions continue to decrease in South Carolina. Furthermore, there are currently no designated nonattainment areas in South Carolina or in the surrounding states. South Carolina examined $PM_{2.5}$ monitoring data from 2005–August 2015 in the State and determined that the design values have been below the standard since 2010. The State also determined that $PM_{2.5}$ design values over most of the Southeast have declined since 2006. Available certified design value for 2015–2017 in South Carolina and in the surrounding states is also below the standard. The highest valid 2015–2017 design value in South Carolina was 9.1 μg/m³ at the Greenville ESC site in Greenville County (AQS ID: 45–045–0015). The highest valid design value in the neighboring states was 10.5 μg/m³ at the near road site by Georgia Institute of Technology in Fulton County, Georgia (AQS ID: 13–121–0056). EPA's 10-year trend analysis indicates that South Carolina monitors generally exhibited a decreasing trend in $PM_{2.5}$ concentrations from 2008 to 2017. More information on air quality trends in South Carolina are provided in the TSD included in the docket for this proposed rulemaking.

EPA's supplemental analysis focused on whether there are maintenance or nonattainment receptors for 2021 to which source emissions in South Carolina are linked. As noted in section III.C above, EPA's 2016 memorandum identifies the Allegheny County Liberty monitor (AQS ID: 42–003–0064) as a potential maintenance receptor in 2017, but indicates that it is likely to attain and maintain the annual standard in 2021. EPA's review of the CSAPR contribution modeling indicates that North Carolina will not contribute greater than one percent of the 2012 standard to the Liberty monitor. This is consistent with the fact that the monitor is approximately 365 miles northeast of the South Carolina border.

Based on the weight of the evidence presented above, EPA proposes to approve South Carolina's SIP submission on grounds that it adequately addresses the State's 110(a)(2)(D)(i)(I) good neighbor obligation for the 2012 $PM_{2.5}$ standard and that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

State regulations that are not part of the federally-approved SIP.

[18] EPA approved the CSA emissions caps into North Carolina's SIP on September 26, 2011. *See* 76 FR 59250. The first cap was effective in 2007 and a significant step forward towards complying with 1997 $PM_{2.5}$ and 8-hour ozone NAAQS.

[19] CSAPR currently caps EGUs in the State at specific $NO_X$ and $SO_2$ emission budgets.

[20] Title V of the CAA requires major sources of air pollutants, and certain other sources, to obtain and operate in compliance with an operating permit.

*H. Tennessee*

Tennessee concluded in its December 16, 2015 $PM_{2.5}$ infrastructure SIP submission that it does not contribute significantly to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state for the following reasons: (1) There are no designated $PM_{2.5}$ nonattainment areas in Tennessee or in surrounding states; (2) available monitoring data in Tennessee show design values below the standard and $PM_{2.5}$ concentrations have declined over the majority of the Southeast since 2006; (3) estimated $PM_{2.5}$ precursor emissions from Tennessee EGUs have declined; and (4) there are SIP-approved state regulations in place to control $PM_{2.5}$ and $PM_{2.5}$ precursor emissions. Based on the rationale discussed below, EPA proposes to approve Tennessee's SIP submission on grounds that it has adequate provisions to ensure that emissions from sources within the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

Tennessee indicated that a number of $SO_2$ control measures are being implemented at many of the State's largest sources. For example, the Tennessee Valley Authority (TVA) is subject to a Federal Facilities Compliance Agreement (FFCA) [21] and a consent decree [22] that require TVA to retire several coal-fired units and to take a number of other measures to reduce $SO_2$ emissions. Tennessee estimated that the retirements alone will decrease emissions by roughly 27,268 tons of $SO_2$ from 2014 levels, a 46 percent reduction. Additionally, the FFCA and the consent decree require certain TVA coal-fired units to install selective catalytic reduction system and flue gas desulfurization system controls and require units with these controls to operate the controls continuously.

Additionally, Tennessee notes that all coal-fired EGUs in the State are subject to 40 CFR 63 Subpart UUUUU, Mercury and Air Toxics Standards, which require further unit level reductions to emissions of mercury, particulate matter, $SO_2$, hydrogen chloride, and several other hazardous pollutants. Tennessee estimated that $PM_{2.5}$ emissions data for title V sources in the state have decreased by approximately 66 percent from 2003–2014, and are expected to continue to decrease. Tennessee also identified several SIP-approved Tennessee Air Pollution Control Rules that require enforceable limits and control measures for $PM_{2.5}$ and precursor emissions [23] within the State as well as other federally-enforceable measures not part of the federal-approved SIP that require reduction in $SO_2$ emissions for certain sources in the State. Currently available quality-assured, certified data for 2015–2017 in Tennessee and in the surrounding states is below the annual standard. The highest valid 2015–2017 design value in Tennessee was 10.0 μg/m³ at the Air Lab site in Knox County (AQS ID: 47–093–1013). The highest valid design value in the neighboring states was 11.0 μg/m³ at the Arkadelphia near-road site in Jefferson County, Alabama (AQS ID: 01–073–2059). EPA's 10-year trend analysis indicate that Tennessee monitors generally exhibited a decreasing trend in $PM_{2.5}$ concentrations from 2008 to 2017. More information on air quality trends in Tennessee are provided in the TSD included in the docket for this proposed rulemaking.

EPA's supplemental analysis focused on whether there are maintenance or nonattainment receptors for 2021 to which source emissions in Tennessee emissions are linked. As noted in section III.C above, EPA's 2016 memorandum identifies the Allegheny County Liberty monitor (AQS ID: 42–003–0064) as a potential maintenance receptor in 2017, but indicates that it is likely to attain and maintain the annual standard in 2021. Tennessee's review of the CSAPR contribution modeling, as provided in the State's 2015 SIP submittal, indicates that sources in the State contribute 0.133 μg/m³ to the Liberty monitoring site which is greater than one percent of the 2012 standard and consistent with EPA's review of the CSAPR contribution modeling.[24] The Allegheny County monitor is approximately 300 miles upwind from the Tennessee border. EPA notes that current precursor $SO_2$ emissions in Tennessee are 58,450 tons,[25] lower than modeled $SO_2$ emissions of 324,377 tons, for the CSAPR.[26]

Tennessee's 2015 SIP submission identifies several SIP-approved regulations that regulate sources of $PM_{2.5}$ precursor emissions (as well as other federally-enforceable measures not part of the federally-approved SIP), reductions in $PM_{2.5}$ precursor emissions due to permanent and enforceable emission reduction measures, and the downward trend of $PM_{2.5}$ monitored concentrations in Tennessee and surrounding states. Additionally, as discussed in section III.C above, both local and regional emissions reductions of primary $PM_{2.5}$, $SO_2$, and $NO_X$, have led to large reductions in annual $PM_{2.5}$ design values in Allegheny County, Pennsylvania. The Liberty monitor is already close to attaining the NAAQS. As mentioned above, the 2015–2017 annual average $PM_{2.5}$ design value for the Liberty monitor is 13.0 μg/m³, which is above the 2012 $PM_{2.5}$ standard. Even so, expected emissions reductions in the next four years will lead to additional reductions in measured $PM_{2.5}$ concentrations at the Liberty monitor. Based on EPA's modeling projections, the recent downward trend in local and regional emissions reductions, the expected continued downward trend in emissions between 2017 and 2021, and the downward trend in monitored $PM_{2.5}$ concentrations, EPA expects that the Liberty monitor will attain and be able to maintain the 2012 $PM_{2.5}$ NAAQS by the 2021 attainment deadline without additional $PM_{2.5}$ precursor emission reductions from Tennessee. Therefore, EPA proposes to determine that additional emission reductions from sources in Tennessee are not necessary to satisfy the State's obligations under section 110(a)(2)(D)(i)(I) of the CAA. For these reasons, EPA proposes to determine that Tennessee's emissions will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS for Allegheny County, Pennsylvania.

Based on the weight of the evidence presented above, EPA proposes to approve Tennessee's SIP submission on grounds that it adequately addresses the State's 110(a)(2)(D)(i)(I) good neighbor obligation for the 2012 $PM_{2.5}$ standard and that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

## IV. Proposed Action

As described above, EPA is proposing to approve the portions of the aforementioned infrastructure

[21] Federal Facilities Compliance Agreement Between the United States Environmental Protection Agency and the Tennessee Valley Authority, In the Matter of: Tennessee Valley Authority, Docket No. CAA–04–2010–1760. The FFCA is available at *https://www.epa.gov/sites/production/files/documents/tva-ffca.pdf.*

[22] *State of Alabama et. al.* v. *TVA,* Civil Action No. 3:11–cv–00170 (E.D. Tenn., approved June 30, 2011) imposes certain requirements on various TVA facilities that are enforceable in accordance with the terms of that agreement. The consent decree is available at *https://www.epa.gov/sites/production/files/documents/tvacoal-fired-cd.pdf.*

[23] See Table 1 in Tennessee's SIP submittal.

[24] See Table 4 in Tennessee's SIP submittal.

[25] The 2014 NEI v2 emissions are available in the docket for this rulemaking.

[26] The CSAPR modeled $SO_2$ emissions numbers, for the 2012 contribution case, can be found in this TSD in Table 7–4 at *https://www.epa.gov/sites/production/files/2017-06/documents/epa-hq-oar-2009-0491-4522.pdf.*

submissions from Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) for the 2012 $PM_{2.5}$ NAAQS.

**V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIPs subject to these proposed actions, with the exception of the South Carolina SIP, are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. With respect to the South Carolina SIP, EPA notes that the Catawba Indian Nation Reservation is located within South Carolina, and pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' Thus, the South Carolina SIP applies to the Catawba Reservation; however, because the proposed action related to South Carolina is not proposing to approve any specific rule into the South Carolina SIP, but rather proposing to find that the State's already approved SIP meets certain CAA requirements, EPA proposes to determine that there are no substantial direct effects on the Catawba Indian Nation. EPA has also preliminarily determined that the proposed action related to South Carolina's SIP will not impose any substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 31, 2018.

**Onis ''Trey'' Glenn, III,**

*Regional Administrator, Region 4.*

[FR Doc. 2018–16991 Filed 8–8–18; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Parts 405, 410, 411, 414, 415, and 495

**[CMS–1693–P]**

**RIN 0938–AT31**

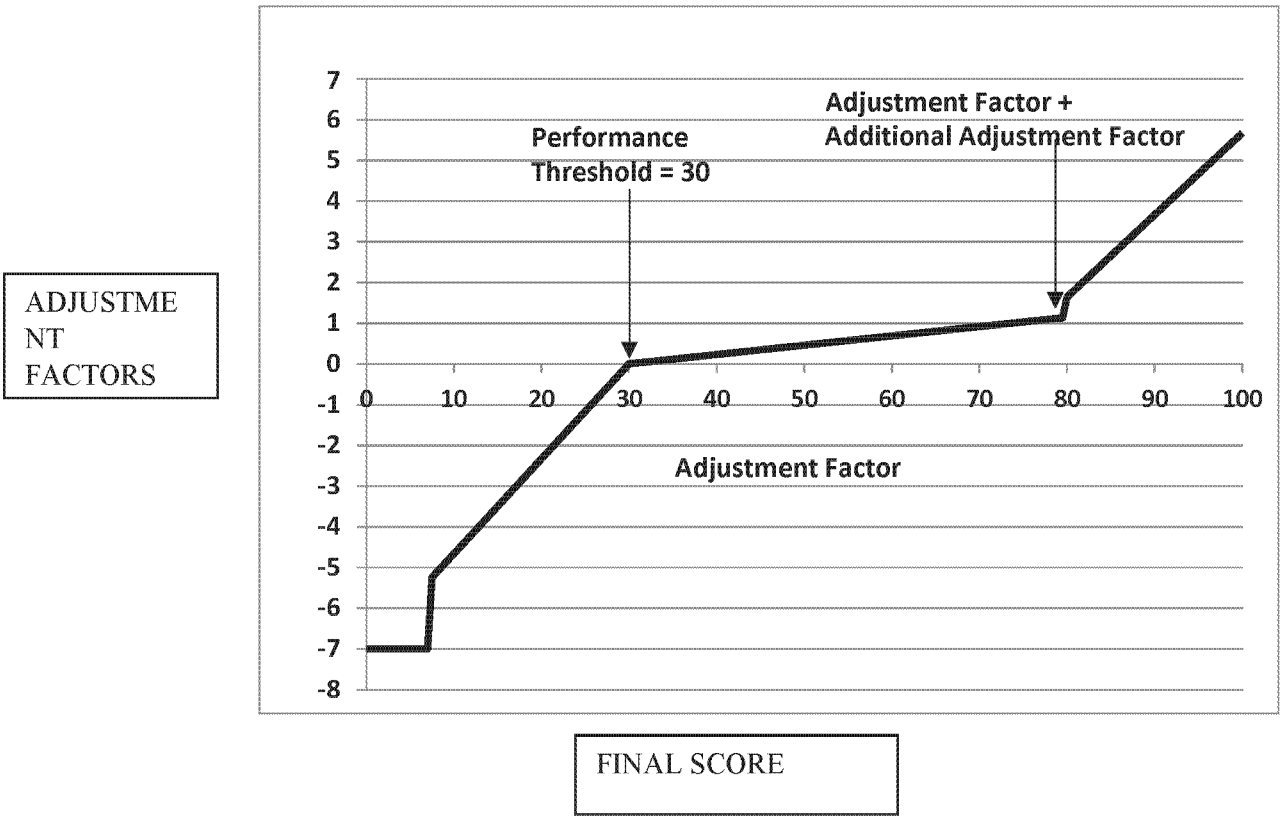
### Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2019; Medicare Shared Savings Program Requirements; Quality Payment Program; and Medicaid Promoting Interoperability Program

*Correction*

In proposed rule document 2018–14985, appearing on pages 35704 through 36368 in the issue of Friday, July 27, 2018, make the following correction:

On page 35978, Figure A is corrected to read as set forth below.

**FIGURE A: Illustrative Example of MIPS Payment Adjustment Factors Based on Final Scores and Performance Threshold and Additional Performance Threshold for the 2021 MIPS Payment Year**




**Note:** The adjustment factor for final score values above the performance threshold is illustrative. For MIPS eligible clinicians with a final score of 100, the adjustment factor would be 7 percent times a scaling factor greater than zero and less than or equal to 3.0. The scaling factor is intended to ensure budget neutrality, but cannot be higher than 3.0. The additional adjustment factor is also illustrative. The additional adjustment factor starts at 0.5 percent and cannot exceed 10 percent and is also multiplied by a scaling factor that is greater than zero and less than or equal to 1. MIPS eligible clinicians at or above the additional performance threshold will receive the amount of the adjustment factor plus the additional adjustment factor. This example is illustrative as the actual payment adjustments may vary based on the distribution of final scores for MIPS eligible clinicians.

[FR Doc. C1–2018–14985 Filed 8–6–18; 4:15 pm]

BILLING CODE 1301–00–D

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 180220191–8191–01]**

**RIN 0648–BH80**

## Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Commercial Accountability Measure Framework Adjustment 13

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes modifications to the commercial summer flounder, scup, and black sea bass accountability measures, as recommended by the Mid-Atlantic Fishery Management Council. The proposed change would adjust the accountability measures based on the status of the stocks. This rule is intended to provide additional flexibility in determining when accountability measures are appropriate, similar to how the accountability

measures are applied towards the recreational fisheries for these species.

**DATES:** Comments must be received by September 10, 2018.

**ADDRESSES:** An environmental assessment (EA) was prepared for this action and describes the proposed measures and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the Summer Flounder, Scup, and Black Sea Bass Commercial Accountability Measure Framework, including the EA, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the internet at *http://www.mafmc.org/s/sfsbsb-commercial-AM-FW-draftEA.pdf.*

You may submit comments on this document, identified by NOAA–NMFS–2018–0080, by either of the following methods:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0080,*

2. Click the ''Comment Now!'' icon, complete the required fields, and

3. Enter or attach your comments.

—OR—

*Mail:* Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Proposed Rule to Modify the Summer Flounder, Scup, and Black Sea Bass Commercial Accountability Measures.''

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Emily Gilbert, Fishery Policy Analyst, (978) 281–9244.

**SUPPLEMENTARY INFORMATION:**

## General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N lat. (the approximate latitude of Cape Hatteras, North Carolina). States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's management plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen commercially fishing in Federal waters of the exclusive economic zone, as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish. This rule proposes to modify current Federal regulations that require accountability measures (AM) when the commercial annual catch limit (ACL) is exceeded for any of these three species. AMs and ACLs are only required in the Federal FMP and, as such, no joint action is needed with the Commission.

There are currently two types of commercial sector AMs for summer flounder, scup, and black sea bass. The first is a pound-for-pound landings overage repayment that is applied when the commercial quota is exceeded. This AM is functioning as intended and would not be adjusted by this action. The second is a non-landings based AM that is applied to the commercial annual catch target (ACT) when the commercial annual catch limit (ACL) has been exceeded and the overage is caused by commercial fishery discards. This action would adjust this non-landings based AM for summer flounder, scup, and black sea bass. The proposed revisions are designed to better account for the variability in commercial discard estimates and provide additional flexibility to these AMs based on stock status and the biological consequences, if any, of estimated discard overages. NMFS adopted similar AMs for the recreational fisheries managed by the Council in 2013 (78 FR 76759; December 19, 2013).

## Proposed Action

The Council reviewed the proposed regulations and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Conservation and Management Act.

### *Incorporate Stock Status in Non-Landings AM Determination*

This rule proposes the following system of AMs to be applied when discards cause the commercial ACL to be exceeded.

(1) If the current biomass (B) is above the biomass target ($B_{MSY}$) (*i.e.,* $B/B_{MSY} \geq 1$), no overage payback is required.

(2) If the current biomass is above the biomass threshold (*i.e.,* not overfished), but below the biomass target ($1 \geq B/B_{MSY} \geq ½$), and the stock is not under a rebuilding plan, then the following non-landing payback is applied:

a. If fishery discards cause the commercial ACL to be exceeded, but not the acceptable biological catch (ABC), no overage is required; or

b. If the fishery discards casue the commercial ACL to be exceeded, and the ABC is exceeded, then a scaled, single-year adjustment to the commercial ACT would be made based on stock biomass (as explained below), so that the adjustment is larger the closer the overall biomass is to the threshold.

(3) If the stock is overfished (*i.e.,* the most recent estimate of biomass is below the threshold, or $B/B_{MSY} < ½$), under a rebuilding plan, or the biological reference points (*i.e.,* stock status) are unknown, then a pound-for-pound payback is required for any non-landings overage.

### *Scaled Payback Calculation*

The Council recommends that the amount of a payback (if determined to be appropriate under criteria 2b, as defined above) be scaled relative to the biomass. The payback would be calculated as the difference between the catch and the ACL (*i.e.,* the overage amount) and the payback coefficient. The payback coefficient is equal to the difference between the most recent estimate of $B_{MSY}$ and the current biomass, divided by ½ $B_{MSY}$.

This would result in a smaller payback the closer the estimated biomass is to the target and a larger payback the farther away the estimated biomass is from the target. This scaling is intended to minimize impacts of a payback for healthy stocks, while still accounting for the biological

consequences of the overage. As previously noted under criterion 3, this scaling would not be used if the stock was overfished (*i.e.,* if $B/B_{MSY} < ½$), or if the stock status is unknown. In those cases, the payback would be equal to the full amount of the overage.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with an environmental assessment. According to the commercial ownership database, 910 affiliate firms landed summer flounder, scup, and/or black sea bass during 2014–2016, with 906 of those business affiliates categorized as small business and four categorized as large business. Summer flounder, scup, and black sea bass represented approximately 12 percent of the average gross receipts of the small entities considered and 3 percent of the average receipts of the large entities considered over this time period. This action does not affect the for-hire recreational fishery.

Analyses indicate that the proposed action would range from no payback or to a pound-for-pound payback (status quo) and is not expected to substantially change fishing effort or the spatial and/or temporal distribution of current fishing effort. The proposed non-landing AM payback alternative is expected to minimize the frequency and magnitude of non-landing annual catch limit overage repayments. This alternative would make regulated small entities no worse off than they would be if no action was taken, and better off under current and expected future stock conditions.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 3, 2018.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.103, paragraph (b)(3) is revised to read as follows:

### § 648.103 Summer flounder accountability measures.

* * * * *

(b) * * *

(3) *Non-landing accountability measure.* In the event that the commercial ACL is exceeded and that the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(i) *Overfishing, rebuilding, or unknown stock status.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (*i.e.,* $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(ii) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(A) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(B) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and $B_{MSY}$ (*i.e.,* $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(iii) *If biomass is above* $B_{MSY}$. If the most recent estimate of biomass is above $B_{MSY}$ (*i.e.,* $B/B_{MSY}$ is greater than 1.0), then no single-year AM payback is required.

* * * * *

■ 3. In § 648.123, paragraph (b) is revised to read as follows:

### § 648.123 Scup accountability measures.

* * * * *

(b) *Non-landing accountability measure.* In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(1) *Overfishing, rebuilding, or unknown stock status.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (*i.e.,* $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(ii) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and $B_{MSY}$ (*i.e.,* $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(3) *If biomass is above* $B_{MSY}$. If the most recent estimate of biomass is above $B_{MSY}$ (*i.e.,* $B/B_{MSY}$ is greater than 1.0),

then no single-year AM payback is required.

* * * * *

■ 4. In § 648.143, paragraph (b) is revised to read as follows:

**§ 648.143 Black sea bass accountability measures.**

* * * * *

(b) *Non-landing accountability measure.* In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(1) *Overfishing, rebuilding, or unknown stock status.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (*i.e.,* $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(ii) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and $B_{MSY}$ (*i.e.,* $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(3) *If biomass is above* $B_{MSY}$. If the most recent estimate of biomass is above $B_{MSY}$ (*i.e.,* $B/B_{MSY}$ is greater than 1.0), then no single-year AM payback is required.

* * * * *

[FR Doc. 2018–17031 Filed 8–8–18; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 83, No. 154

Thursday, August 9, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Tongass National Forest, Petersburg Ranger District, Alaska; Central Tongass Project Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) to analyze a variety of resource management actions to implement over the course of 15 years. The purpose of the project is to meet multiple resource goals and objectives (*i.e.,* needs) identified in the 2016 Tongass Land and Resource Management Plan (Forest Plan) using an integrated approach. Some of the project area needs include improving forest ecosystem health, supporting community resilience through economic development opportunities within Southeast Alaska communities, providing sustainable recreation opportunities to local visitors and the tourism industry, and offering a variety of wood products to regional mills and local communities. A variety of management activities (the Proposed Action) address these needs. Implementation of the management activities will often include one or more Supporting Actions, such as quarry development or sign installation. At the same time that it would approve the proposed project, the Forest Service may approve a project-specific Forest Plan amendment to ensure the project is consistent with the plan. This notices also identifies the substantive provisions of the 2012 Planning Rule that are likely to be directly related to a proposed forest plan amendment.

**DATES:** Comments concerning the scope of the analysis must be received by September 24, 2018. The publication date of this Notice of Intent (NOI) in the **Federal Register** is the exclusive means for calculating the comment period for this scoping opportunity. If the comment period ends on a Saturday, Sunday, or Federal holiday, comments will be accepted until the end of the next Federal working day (11:59 p.m.). The draft EIS is expected in April of 2019, and the final EIS is expected in May of 2020.

**ADDRESSES:** Send written comments to Petersburg Ranger District, c/o Carey Case, P.O. Box 1328, Petersburg, Alaska 99833, Attn: Central Tongass Project. Comments may also be hand-delivered to the Petersburg Ranger District, 12 North Nordic Drive, Petersburg, Alaska 99833; sent via email to *comments-alaska-tongass-petersburg@fs.fed.us;* facsimile to (907) 772–5995; or submitted electronically at *https://cara.ecosystem-management.org/Public/CommentInput?project=53098.*

**FOR FURTHER INFORMATION CONTACT:** David Zimmerman, District Ranger, or Carey Case, Project Leader, at the Petersburg Ranger District, P.O. Box 1328, Petersburg, Alaska 99833, or by telephone (907) 772–3871. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Central Tongass project area encompasses National Forest System (NFS) lands and lands of other ownership, as authorized by other land owners, within the Petersburg and Wrangell Ranger Districts (3.7 million acres) to facilitate integrated and economical projects across all lands. Other than for invasive treatments, Wilderness will not be considered for resource management actions. The project area includes, but is not limited to, Mitkof, Kupreanof, Kuiu, Wrangell, Zarembo and Etolin Islands and the Alaska mainland.

#### Purpose and Need for Action

This action is needed to meet Forest Plan goals and objectives, and to support local and regional economies. The needs for this project have been identified by comparing the existing conditions within the project area with the desired conditions (desired long-term landscape attributes) defined in the Tongass Forest Plan (Chapter 2). Where desired conditions are not being met, a need exists. For this project, four categories of needs were identified: Watershed Restoration and Improvement, Vegetation Management, Access Management, and Sustainable Recreation Management.

*Watershed Restoration and Improvement:* A need exists to maintain or restore the natural range of habitat conditions in the project area to support viable wildlife, fish, and plant populations for subsistence, traditional and cultural uses, and to sustain diversity. In some watersheds, this need includes riparian ecosystem function improvements or enhancements, water quality maintenance and protection, fish habitat improvements, and native plant population protection.

*Vegetation Management:* A need exists for NFS lands to regularly provide forest products, such as saw timber, to support Southeast Alaska communities. By providing forest products on a regular basis, the Forest Service can better support local employment, increase revenue returns, and maintain flexibility and stability in the timber sale program. A need also exists for young-growth forest management to sustain productive timber stands for future use, and to improve habitat for wildlife and fish.

*Access Management:* A long-term need exists to design, construct, maintain, and manage a cost-effective transportation system that supports management activities and provides Forest users access to subsistence, recreation and traditional use opportunities.

*Sustainable Recreation Management:* Within the project area, a need exists to (1) maintain existing recreation sites and facilities to provide for the health and safety of all users, (2) construct or reconstruct facilities in locations where the needs for the facilities are supported by either known use, partnerships for long-term maintenance, or repeated safety concerns, or (3) remove facilities that are no longer needed or are not affordable (Forest Plan, p. 2–4).

The purpose of the Central Tongass Project is to meet the identified needs to improve forest ecosystem health, support community resiliency, and provide economic development opportunities on the Petersburg and

Wrangell Ranger Districts. This project will be designed to meet Forest Plan goals and objectives, and land use designation goals, objectives, and desired conditions using an integrated land management approach. Forest-wide goals and objectives this project aims to address include, but are not limited to, Local and Regional Economies, Biodiversity, Timber, Wildlife, Transportation, Fish, Recreation and Tourism, and Young Growth Direction (Forest Plan, pp. 2–2 to 2–6, 5–2 to 5–3, 5–6, 5–8, 5–13 and 5–14).

**Proposed Action**

The Forest Service proposes a multi-year project to implement a variety of activities over the next 15 years within the Central Tongass project area. The project area includes NFS lands and lands of other ownership. Wilderness areas are not included in the land base available for proposed activities, with the exception of invasive plant treatments. The Proposed Action encompasses a range of management activities that address the broader needs identified within the Purpose and Need, and seeks to balance commercial and non-commercial opportunities and provide and maintain high-quality experiences for all Forest users over the long-term, while maintaining or improving land and resource conditions.

The Proposed Action was developed by comparing existing conditions within the project area to the Forest's desired landscape attributes, and considering best-available science and public input.

A guide will be developed to ensure the implementation of site-specific activities is consistent with the Central Tongass Project environmental analysis. Conditions such as stand age, use levels, and proximity to sensitive habitat will be evaluated before implementation may occur. If the effects of implementing a site-specific activity is expected to be outside the range of effects disclosed in the environmental analysis, the activity will not be implemented as part of the Central Tongass Project.

Individual activity cards will define each activity and guide its implementation over the life of the project. Information provided on the cards will include objectives and methods of implementation, resource-specific guidelines, activity design features, conditions that trigger implementation, and integration opportunities to maximize shared resources between program areas.

*Watershed Restoration and Improvement*

Watershed restoration and improvement activities on all lands within the project area include: Stream and floodplain restoration, fish habitat improvements, and invasive plant management.

To restore proper stream and floodplain functioning conditions, the Forest Service proposes instream wood placement on up to 700 acres (approximately 13 miles of stream) using heavy equipment and/or a helicopter, and instream wood placement on up to 1,720 acres (approximately 54 miles of stream) using hand tools.

To sustain the diversity and production of fish and other freshwater organisms, the Forest Service proposes fisheries improvements such as pool habitat creation, fish pass construction, natural instream barrier modifications, stocking and lake fertilization on up to 15 sites that collectively include no more than 25 miles of stream and 2 lakes.

The Forest Service proposes to use an integrated pest management strategy to treat invasive plant infestations on NFS and neighboring lands. Treatments proposed include manual methods such as hand-pulling or tarping; mechanical methods such as mowing or torching; and herbicide application including wicking/wiping, stem injection, foliar spot spray, or broadcast spray. Proposed herbicides include aminopyralid or aquatic-approved glyphosate and imazapyr. When deciding whether or not to treat an invasive plant, the Forest Service will consider the following factors: The target species' Alaska Natural Heritage Program invasiveness ranking, the location of the target species, its pathway of spread, and the management objective for the infestation. If the Forest Service decides to treat, the most cost-efficient and effective treatment method will be selected. Herbicide treatment areas may include terrestrial and emergent (plants rooted in water with foliage above the water surface) vegetation. Subsurface aquatic plant treatment is not proposed. To provide the flexibility to treat new infestations, the Proposed Action also includes a management strategy called early detection-rapid response.

*Vegetation Management*

Vegetation management activities include: Old-growth and young-growth commercial harvest and silvicultural intermediate treatments (young-growth pre-commercial thinning treatments, and wildlife habitat improvement treatments). Old-growth and young-growth activities will occur in 10 timber analysis areas (TAAs) within the project area. These analysis areas have developed road systems and encompass the majority of the suitable lands for timber harvest, as defined under the Forest Plan. Consequently, TAAs are a primary factor in determining where to plan timber harvest for this project. The TAAs are located on Mitkof, Kupreanof, Kuiu, Wrangell, Zarembo and Etolin islands, and at Thomas Bay on the Alaska mainland.

The Forest Service proposes to commercially harvest up to 9,500 acres (approximately 150 million board feet [MMBF]) of old-growth timber, and up to 4,000 acres (approximately 80 MMBF) of young-growth timber from stands on suitable lands within the project's 15-year timeframe. Timber harvest methods include even-aged and two-aged management prescriptions (conventional ground-based logging methods), and uneven-aged management prescriptions (helicopter yarding). Commercial harvest of old-growth and young-growth timber includes microsale and large, small, and salvage sale opportunities.

The Forest Service proposes to treat up to 3,000 acres of young-growth stands annually, or 45,000 acres total over the next 15 years that are approaching, have reached, or are in the stem exclusion stage of stand development. Young-growth treatments (activities) include pre-commercial thinning for timber stand improvement and wildlife and riparian habitat improvement (such as to create or maintain wildlife gaps, openings, corridors and trees; girdle and prune trees; and treat slash).

*Access Management*

Access management activities include (1) new NFS road construction, (2) NFS road reconstruction, (3) temporary road construction, (4) aquatic organism passage and fish habitat connectivity, and (5) construction, reconstruction, decommissioning and maintenance of marine access facilities, such as log transfer facilities, docks, mooring buoys, boat ramps and boat launches. Road storage and decommissioning are Supporting Actions.

The Forest Service proposes approximately 24 miles of NFS road construction, 63 miles of NFS road reconstruction, and 88 miles of temporary road construction for timber harvest and other resource management activities.

The Forest Service proposes to replace, remove, or improve up to 150 stream crossing structures where fish

passage is inhibited (''red pipes'') using heavy equipment, hand tools, or explosives to rectify fish migration or movement barriers and provide effective flood resiliency.

The Forest Service proposes up to 33 new stream crossing structures, such as culverts and bridges, to support proposed vegetation and access management activities.

The Forest Service proposes to maintain or improve 14 existing marine access facilities (MAFs), and construct up to 4 MAF sites for log transfer and public access within the Central Tongass project area. Additionally, up to 69 marine access facility sites, such as docks, boat ramps and floats, may be maintained, constructed, or improved for public access. These sites are typically not associated with a road system, but used for access to shoreline or inland water facilities such as cabins, shelters, or trailheads.

*Sustainable Recreation Management*

Proposed recreation activities on NFS and neighboring lands include maintenance, improvements, new construction, and decommissioning of some existing recreation facilities. Recreation facilities include cabins, shelters, picnic areas, campgrounds, dispersed camping sites, outhouses, viewing areas and platforms. Trail construction, reconstruction, decommissioning, and maintenance may also occur, and includes pedestrian trails, motorized trails, snow trails, canoe and kayak portages, and conversion of existing trails from boardwalk to gravel.

Recreation management activities including trail building will be prioritized during implementation based on the following conditions (1) health and safety concerns for recreation users, (2) availability of internal or external funding sources, (3) current and projected use levels and degraded resource conditions from human use such as vegetation trampling, site hardening, soil erosion, and (4) feasibility due to topography.

The Forest Service proposes constructing up to 6 new cabins, 30 day use/picnic areas, 6 platforms for interpretative or wildlife viewing use, and 10 dispersed camp sites (including tent platforms). The Forest Service also proposes decommissioning up to 15 cabins, constructing up to 10 new shelters and/or converting cabins to shelters, and constructing or replacing up to 75 outhouses. The Forest Service proposes up to 300 miles of pedestrian trail construction (this includes new construction and/or converting existing boardwalk trail to gravel trail), up to 60 miles of new motorized trails, and up to 105 miles of winter trails.

*Supporting Actions*

Supporting Actions will be implemented, as needed, in support of the management activities described above. They include actions such as road maintenance and reconditioning, road decommissioning, road storage, sign installation, quarry development, soil restoration, cone collection, and timber stand establishment (planting and interplanting).

**Forest Plan Amendment**

A project-specific Forest Plan amendment may be proposed to allow the project to proceed in a manner that fulfills the project's stated purpose and need while being consistent with the Plan. The amendment would be to relax the Scenic Integrity Objectives (SIOs) (Forest Plan, p. 4–54) on portions of the TAAs on Mitkof, Zarembo, and Wrangell Islands, and Portage Bay located on Kupreanof Island, to improve timber sale economics for the commercial timber sales undertaken as part of this project only. If this Forest Plan amendment is included in the Central Tongass Project, the 2012 Planning Rule (36 CFR 219.13(b)(2)) requires the Responsible Official to identify which substantive requirements of the Rule are likely to be directly related to a proposed land management plan amendment. At this time, the Responsible Official believes the following requirements of the Rule are likely to apply: 36 CFR 219.8(b)(2); 36 CFR 219.10(a)(1); and 36 CFR 219.10(b)(1)(i).

**Possible Alternatives**

Other alternatives will be developed based on any significant issues identified in public comments and from internal Forest Service considerations. A no action alternative, which represents no change and serves as the baseline for the comparison among the action alternatives, will be analyzed as well.

**Responsible Official**

The Responsible Official for the decision on this project is M. Earl Stewart, Forest Supervisor, Tongass National Forest, Federal Building, 648 Mission Street, Ketchikan, Alaska 99901.

**Nature of Decision To Be Made**

Given the purpose and need of the project, the Responsible Official will review the no action, the proposed action, other alternatives, and the environmental consequences to make decisions that include: (1) Whether to select the proposed action or another alternative; (2) mitigation measures and monitoring requirements; (3) the range of treatments or activities to be authorized including commercial and pre-commercial timber treatments, restoration activities, invasive plant treatments, habitat improvement, road construction and reconstruction, and recreation development or decommissioning opportunities; (4) whether a project-specific Forest Plan amendment related to Scenery Integrity Objectives is necessary; and (5) whether there may be a significant restriction of subsistence uses.

**Permits or Licenses Required**

All necessary permits would be obtained prior to project implementation, and may include the following:

(1) State of Alaska, Department of Environmental Conservation (DEC), Alaska Pollutant Discharge Elimination System (APDES):

- General permit for Log Transfer Facilities in Alaska;
- Review Spill Prevention Control and Countermeasure Plan;
- Certification of Compliance with Alaska Water Quality Standards (401 Certification) Chapter 20;
- Storm Water Discharge Permit/ National Pollutant Discharge Elimination System review (Section 402 of the Clean Water Act);
- Solid Waste Disposal Permit.

(2) U.S. Army Corp of Engineers:

- Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
- Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899.

(3) State of Alaska, Division of Natural Resources (DNR):

- Authorization for occupancy and use of tidelands and submerged lands.

(4) State of Alaska, Department of Fish and Game (ADF&G)

- Fish Habitat Concurrence (Title 16).

**Scoping Process**

This Notice of Intent initiates the scoping process, which guides the development of the EIS. The Forest Service is seeking information, comments, and assistance from Tribal Governments; Federal, State, and local agencies; and individuals and organizations interested in or affected by the proposed activities. There will also be public meetings and subsistence hearings held in Kake, Petersburg, and Wrangell, Alaska. In addition to this

Notice of Intent, a legal notice will be placed in the Ketchikan Daily News, the official newspaper of record for this project. Courtesy notifications will be placed in the Petersburg Pilot and the Wrangell Sentinel, local community newspapers. Project information, updates, and documents will be provided throughout the process on the project web page at *https://www.fs.usda.gov/detail/tongass/landmanagement/projects/?cid=fseprd568085.* Individuals may also provide comments and sign up to be on the electronic mailing list at that site.

The Central Tongass Project is an activity implementing the Forest Plan and is subject to the notification requirements and objection procedures of 36 CFR 218, subparts A and B, which states that only individuals or entities who submit timely and specific written comments about this proposed project during this or another public comment period established by the Responsible Official will be eligible to file an objection. If a Forest Plan amendment is included in the Central Tongass Project, it would only apply to the Central Tongass Project; therefore, the notification requirements of 36 CFR 219 are not required.

It is important that reviewers provide their comments at such times and in such a manner to be useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous commenters will not gain standing to object as defined in 36 CFR 218.2.

Dated: July 23, 2018.

**Chris French,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2018–17059 Filed 8–8–18; 8:45 am]

BILLING CODE 3411–15–P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Technical Assistance and Training Grant Program

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of Funding Announcement (NOFA) under the Technical Assistance and Training Grant Program.

**SUMMARY:** The Rural Utilities Service, an agency of the United State Department of Agriculture, announces an additional application window for Fiscal Year (FY) 2018 for the Technical Assistance and Training Grant Program (TAT). This Notice seeks applications emphasizing priorities for either a national water and wastewater infrastructure application assistance and project development program or a national apprenticeship/workforce development program.

**DATES:** Applications for the TAT grants will only be accepted electronically according to the following deadline:

Submit grant applications at *https://www.grants.gov* (*Grants.gov*) and follow the instructions found on that website. Electronic submissions of applications must be received by September 10, 2018 to be eligible for grant funding. Late or incomplete applications will not be eligible for grant funding. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, if such requests are made prior to August 24, 2018. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

**ADDRESSES:** All grant applications must be submitted electronically at *https://www.grants.gov/* (*Grants.gov*), following the instructions you find on that website. The FY 2018 Application Guide may be obtained from the Water and Waste Disposal Technical Assistance & Training Grants website at *https://www.rd.usda.gov/programs-services/water-waste-disposal-technical-assistance-training-grants.*

**FOR FURTHER INFORMATION CONTACT:** LaVonda Pernell, Community Program Specialist, Water Program Division, Rural Utilities Service, U.S. Department of Agriculture, by email at *lavonda.pernell@wdc.usda.gov* or by telephone: (202) 720–9635.

**SUPPLEMENTARY INFORMATION:**

#### Overview

*Federal Agency:* Rural Utilities Service (RUS).

*Funding Opportunity Title:* Technical Assistance and Training Grants (TAT).

*Announcement Type:* Funding Announcement/Solicitation of Applications.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 10.761.

*Dates:* Completed TAT grant applications must be submitted electronically through *Grants.gov* no later than September 10, 2018 to be eligible for funding.

#### Overview

This Notice announces that the Rural Utilities Service (RUS) is accepting applications for an additional application window for the Technical Assistance and Training Grant Program (TAT). For FY 2018, RUS received a budget appropriation of $40 million for the TAT Program. In response to the application filing period of October 1, 2017, to December 31, 2017, as outlined in 7 CFR 1775, Subpart B, § 1775.10 (a), the Agency received 28 applications that will not use up all of the appropriation. This Notice will make available the remaining funds under the TAT Program, for either a national water and wastewater infrastructure application assistance and project development program or a national apprenticeship/workforce development program.

On March 23, 2018, President Donald Trump signed a $1.3 trillion spending bill with $21.2 billion for new infrastructure spending on transportation, energy and water projects in FY 2018. The intent of this notice is to advise the public of the funds available to support applications emphasizing either of two priorities for technical assistance and training activities. Applications may emphasize technical assistance and training activities to: Provide application assistance and project development that facilitate efforts by rural communities to access funding for water and wastewater infrastructure projects, particularly those communities in smaller, lower income, and persistent poverty areas; or to provide technical assistance and training to personnel to improve the management, operation, and maintenance of water and waste facilities through a national apprenticeship/workforce development program. The Agency encourages applications that will support recommendations made in the Rural Prosperity Task Force report to help improve life in rural America which can be found at *www.usda.gov/ruralprosperity.* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation. Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

*A. Program Description*

The Rural Utilities Service (RUS) provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need. The additional funding provided for TAT grants will allow rural communities to better identify and evaluate solutions to water and waste disposal problems, assist applicants in preparing applications for water and waste loans and grants, and/or improve operation and maintenance of existing water and waste disposal facilities in rural areas. Qualified private non-profit organizations may apply.

*B. Federal Award Information*

Available funds for this funding opportunity will not exceed the $13,000,000.00 remaining from the $40 million in appropriated funds and additional program carryover funds. TAT grants will be awarded by September 30, 2018.

*C. Eligibility Information*

1. In accordance with 7 CFR 1775.35, an organization is eligible to receive a TAT grant if it:

a. Is a private, non-profit organization that has tax-exempt status from the U.S. Internal Revenue Service (IRS);

b. Is legally established and located within one of the following:

i. A State within the United States

ii. the District of Columbia

iii. the Commonwealth of Puerto Rico

iv. United States territory;

c. Has the legal capacity and authority to carry out the grant purpose and scope;

d. Has a proven record of successfully providing technical assistance and/or training to rural areas;

e. Has capitalization acceptable to the Agency;

f. Has no delinquent debt to the federal government or no outstanding judgments to repay a federal debt;

g. Demonstrates that it possesses the financial, technical, and managerial capability to comply with federal and State laws and requirements; and

h. Contracts with a nonaffiliated organization for not more than 49 percent of the grant to provide the proposed assistance.

2. Eligibility requirements for a project.

Qualified projects from an eligible applicant must provide technical assistance and training to RUS eligible water and sewer utilities in rural areas for application assistance and project development to achieve the objectives outlined in 7 CFR 1775.

*D. Application and Submission Information*

1. The FY 2018 Application Guide may be obtained from the Water and Waste Disposal Technical Assistance & Training Grants website at *https://www.rd.usda.gov/programs-services/water-waste-disposal-technical-assistance-training-grants*. Applicants must submit electronic applications at *Grants.gov https://www.grants.gov*.

2. Dun and Bradstreet Data Universal Numbering System (DUNS) and System for Awards Management (SAM) Grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in SAM at all times during which it has an active Federal award or an application or plan under consideration by the Agency. Similarly, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance to 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b). An applicant, unless excepted under 2 CFR 25.110(b), (c), or (d), is required to:

a. Be registered in SAM before submitting its application;

b. Provide a valid DUNS number in its application; and

c. Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Federal awarding agency may not make a federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. As required by the Office of Management and Budget (OMB), all grant applications must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at 1–866–705–5711 or via internet at *http://fedgov.dnb.com/webform.* Additional information concerning this requirement can be obtained on the *Grants.gov* website at *http://www.grants.gov.* Similarly, applicants may register for SAM at *https://www.sam.gov* or by calling 1–866–606–8220. The applicant must provide documentation that they are registered in SAM and their DUNS number. If the applicant does not provide documentation that they are registered in SAM and their DUNS number, the application will not be considered for funding.

You will need the following information when requesting a DUNS number:

a. Legal Name of the Applicant;

b. Headquarters name and address of the Applicant;

c. The names under which the Applicant is doing business as (dba) or other name by which the organization is commonly recognized;

d. Physical address of the Applicant;

e. Mailing address (if separate from headquarters and/or physical address) of the Applicant;

f. Telephone number;

g. Contact name and title; and

h. Number of employees at the physical location.

3. The application and any materials sent with it become Federal records by law and cannot be returned to you. RUS may request original signatures on electronically submitted documents later.

4. Content of Application:

a. To be considered for assistance, you must be an eligible entity and must submit a complete application by the deadline date. You must consult the cost principles and general administrative requirements for grants pertaining to their organizational type in order to prepare the budget and complete other parts of the application. You also must demonstrate compliance (or intent to comply), through certification or other means, with a number of public policy requirements as demonstrated in the forms below.

b. Applicants must complete and submit the following forms to apply for a Technical Assistance and Training grant:

i. Standard Form 424, ''Application for Federal Assistance''.

ii. Standard Form 424A, ''Budget Information—Non-Construction Programs''.

iii. Standard Form 424B, ''Assurances—Non-Construction Programs''.

iv. Standard Form LLL, ''Disclosure of Lobbying Activity''.

v. AD–3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicant''.

vi. AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicant''.

vii. Form RD 400–1, ''Equal Opportunity Agreement''.

viii. Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1964).'' (This assurance agreement requires the collection of race, color, national origin, and ethnicity data on program beneficiaries.)

ix. Indirect Cost Rate Agreement (if applicable, applicant must include approved cost agreement rate schedule).

x. In accordance with 7 CFR 1775, subpart A § 1775.5(j), applicants must certify there is no duplication with the National Forest-Dependent Rural Communities Economic Diversification Act of 1990 (7 U.S.C. 6613).

c. All applications shall be accompanied by the following supporting documentation in concise written narrative form:

i. Evidence of applicant's legal existence and authority.

ii. Evidence of tax exempt status from the Internal Revenue Service (IRS).

iii. A short statement of applicant's experience in providing services similar to those proposed.

iv. A brief description of successfully completed projects including the need that was identified, and objectives accomplished.

v. The latest financial information to show the applicant's financial capacity to carry out the proposed work.

vi. A list of proposed services to be provided.

vii. An estimated breakdown of costs (direct and indirect) including those to be funded by grantee as well as other sources. Sufficient detail should be provided to permit the approval official to determine reasonableness, applicability, and eligibility.

viii. Evidence that a Financial Management System is in place or proposed.

ix. A description of national reach and capability.

x. A description of the type of technical assistance and/or training to be provided and the tasks to be contracted.

xi. A clear explanation of how the proposed services differ from other similar services being provided in the same area and measures to be taken to avoid duplication of federal effort.

xii. Number of personnel on staff or to be contracted to provide the service and their experience with similar projects.

xiii. A statement indicating the maximum number of months it would take to complete the project.

xiv. Explanation of the cost effectiveness of project.

d. Applicants must also submit a flexible work plan/project proposal that will outline the project in sufficient detail to provide the readers with a clear understanding of how the proposed technical assistance and/or training will increase water and wastewater systems' access to funding for infrastructure projects; and/or increase water and wastewater systems' ability to recognize the need for updated or new infrastructure.

e. The applicant must provide evidence of compliance with other federal statutes, including but not limited to the following:

i. Debarment and suspension information is required in accordance with 2 CFR part 417 (Nonprocurement Debarment and Suspension) supplemented by 2 CFR part 180, if it applies. The section heading is ''What information must I provide before entering into a covered transaction with the Federal Government?'' located at 2 CFR 180.335. It is part of OMB's Guidance for Grants and Agreements concerning Government-wide Debarment and Suspension.

ii. All your organization's known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in Subpart B of 2 CFR part 421, which adopts the Government-wide Drug-Free Workplace Act.

iii. 2 CFR parts 200 and 400 (Uniform Assistance Requirements, Cost Principles and Audit Requirements for Federal Awards).

iv. 2 CFR part 182 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)) and 2 CFR part 421 (Requirements for Drug Free Workplace (Financial Assistance)).

v. Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency.'' For information on limited English proficiency and agency-specific guidance, go to *http://www.LEP.gov.*

*E. Application Review Information*

1. RUS will acknowledge the application's receipt by email to the applicant. The application will be reviewed for completeness to determine if it contains all of the items required. If the application is incomplete or ineligible, RUS will return it to the Applicant with an explanation. RUS reserves the right to request additional information once an application is determined to be complete to address application assistance and project development or workforce development needs that are known or anticipated at the time of evaluation or to minimize the risk of duplication of other federal efforts. The RUS grant offer to successful applicants will be based on the submitted application and may be more narrowly tailored than the submitted application to meet rural community needs at the time of the offer or over the course of the grant period.

2. A review team, composed of at least two members, will evaluate all applications and proposals. They will make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria in paragraph C of this section.

3. All applications that are complete and eligible will be scored and ranked competitively. The categories for scoring criteria used are the following:

| Scoring criteria | Points |
|---|---|
| Scope of Assistance (National or Multi-State) | Up to 15. |
| Degree of expertise | Up to 10. |
| Applicant Resources (staff and contract personnel) | Up to 10. |
| Goals/Objectives: Goals/objectives are clearly defined and tied to need, results and measurable outcomes | Up to 15. |
| Extent to which the work plan clearly articulates a well thought out approach to accomplishing objectives; and clearly defines how the applicant would respond to communities served by the TAT grant. | Up to 40. |
| Financial Controls | *Up to 5.* |

| Scoring criteria | Points |
|---|---|
| Type of technical assistance applicant is providing | *Up to 20.* |
| Project duration | *Up to 5.* |
| Administrator Discretion: RUS Administrator may provide additional points based on the following factors: Geographic, economic, or agency priority issues. | *Up to 15.* |

*F. Federal Award Administration Information*

1. RUS will rank all qualifying applications by their final score. Applications will be selected for funding based on the highest scores. The agency expects to award two grants under this notice. The agency reserves the right to make no grant awards if all applications are incomplete and/or score below 65 points. Each applicant will be notified via email of the agency's funding decision.

2. In making its decision about your application, RUS may determine that your application is:

a. Eligible and selected for funding;

b. Eligible and offered fewer funds than requested;

c. Eligible but not selected for funding; or

d. Ineligible for the grant.

3. Applicants selected for funding will complete a grant agreement suitable to RUS, which outlines the terms and conditions of the grant award. Pursuant to the grant agreement, grant funds may be released over the course of the grant period in reimbursement for the performance of eligible, approved activities which do not duplicate similar federal efforts or tasks. The grant agreement may also include reporting and pre-approval requirements consistent with 7 CFR part 1775 which if not met, may result in a delay in reimbursement, disallowance of expense or a suspension of the grant.

4. Grantees will be reimbursed as follows:

a. SF–270, ''Request for Advance or Reimbursement,'' will be completed by the grantee and submitted to either the State or National Office not more frequently than monthly.

b. Upon receipt of a properly completed SF–270, payment will ordinarily be made within 30 days.

5. Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the approval official by written amendment to the Grant. Any change not approved may be cause for termination of the grant.

6. Rates Requirements.

All laborers, apprentices and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Title 40 United States Code, Subtitle II, Part A, chapter 31, subchapter IV, section 3141. Further details on eligible applicants and projects may be found in the relevant regulations listed in Section II.C.

7. Reporting Requirements.

a. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved.

b. SF–269, ''Financial Status Report (short form),'' and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

c. A final project performance report will be required with the last SF–269 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

d. All grantees are to submit an original of each report to the National Office. The project performance reports should detail, in a narrative format, activities that have transpired for the specific time period.

e. The grantee will provide an audit report or financial statements in accordance with Uniform Audit Requirements for Federal Awards at 2 CFR part 200, subpart F.

*G. Federal Awarding Agency Contacts*

A. *Website: http://www.usda.gov/rus/water.* RUS' website maintains up-to-date resources and contact information for TAT Grants program.

B. *Phone:* 202–720–9635.

C. *Email: lavonda.pernell@wdc.usda.gov.*

D. *Main point of contact:* LaVonda Pernell, Community Program Specialist, Water and Environmental Programs, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture.

*H. Civil Rights*

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Remedies and complaint filing deadlines vary by program or incident. Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339.

Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Stop 9410, Washington, DC 20250–9410; (2) Fax: (202) 690–7442; or (3) Email: *program.intake@usda.gov.* USDA is an equal opportunity provider, employer, and lender.

Dated: August 2, 2018.

**Edna Primrose,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2018–16997 Filed 8–8–18; 8:45 am]

**BILLING CODE 3410–15–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Kentucky Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kentucky (State) Advisory Committee will hold a meeting on Thursday August 23, 2018, for continuing committee discussion of project proposal topic.

**DATES:** The meeting will be held on Thursday August 23, 2018 at 1:00 (EST).

*Public Call Information:* The meeting will be by teleconference. Toll-free call-in number: 1–855–710–4182, conference ID: 8689555.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hinton, DFO, at *jhinton@usccr.gov.*

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 1–855–710–4182, conference ID: 8689555. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office by May 14, 2018. Written comments may be emailed to the Southern Region, U.S. Commission on Civil Rights to the Regional Director, Jeffrey Hinton at *jhinton@usccr.gov.* Persons who desire additional information may contact the Regional Programs Division at (312) 353–8312.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kentucky Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Southern Regional representative at the above email.

**Agenda**

Welcome and attendance of advisory committee members
  Dr. Betty Griffin, Chairman/Jeff Hinton, Regional Director, USCCRSRO
Kentucky Advisory Committee update/discussion of project proposal topics
  Dr. Betty Griffin, Chairman, Advisory Committee
Open Comment
  Advisory Committee
Public Participation
Adjournment

Dated: July 26, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018–16332 Filed 8–8–18; 8:45 am]

BILLING CODE P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the South Carolina Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act that the South Carolina Advisory Committee will hold a meeting on Monday, August 13, 2018, for the purpose of beginning work on its project regarding civil rights issues and policing in the state.

**DATES:** The meeting will be held on Monday, August 13, 2018 at 2:00 p.m. EST.

**ADDRESSES:** The meeting will be by teleconference. Toll-free call-in number: 1–888–455–2265, conference ID: 1690755.

**FOR ADDITIONAL INFORMATION CONTACT:** Jeff Hinton, DFO, at *jhinton@usccr.gov* or 404–562–7006.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Program Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Regional Director, Jeffrey Hinton at *jhinton@usccr.gov.* Persons who desire additional information may contact the Regional Program Unite Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Program Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, South Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

**Agenda**

Welcome and Introductions

Professor Seth Stoughton, University of South Carolina School of Law

Discussion on Policing Project

Open Comment

Adjournment

Dated: August 5, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018–17033 Filed 8–8–18; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–560–828]**

### Certain Uncoated Paper From Indonesia: Final Results of Antidumping Duty Administrative Review; 2015–2017

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) continues to find that the one subject producer/exporter of subject merchandise did not sell certain uncoated paper from Indonesia at less that normal value during the period of review (POR), August 26, 2015, through February 28, 2017. No interested party submitted comments on the preliminary results.

**DATES:** Applicable August 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Blaine Wiltse or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–3693, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 9, 2018, Commerce published the *Preliminary Results.*[1] Although we invited parties to comment on the preliminary results of the review,[2] no interested party submitted comments. Accordingly, no decision memorandum accompanies this **Federal Register** notice. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

#### Scope of the Order

The merchandise under review includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level[3] of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered ''printed with final content'' where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

On September 1, 2017, Commerce determined that that imports of uncoated paper with a GE brightness of 83 +/− 1% (83 Bright paper), otherwise meeting the description of in-scope merchandise, constitute merchandise ''altered in form or appearance in minor respects'' from in-scope merchandise that are subject to this order.[4]

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

#### Analysis

In the *Preliminary Results,* we determined that the sole mandatory respondent, APRIL,[5] did not make sales of subject merchandise at prices below normal value during the POR. As no parties commented on the *Preliminary Results,* we are adopting the decisions outlined in the PDM in these final results of review. For additional details, *see* the PDM, which is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the PDM can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the PDM are identical in content.

#### Final Results of the Review

As a result of this review, we are assigning a dumping margin of zero to APRIL for the period August 26, 2015, through February 28, 2017, as follows:

[1] *See Certain Uncoated Paper from Indonesia: Preliminary Results of Antidumping Duty Administrative Review; 2015–2017,* 83 FR 15129 (April 9, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Preliminary Results,* 83 FR at 15130.

[3] One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. ''Colored paper'' as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

[4] *See Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders,* 82 FR 41610 (September 1, 2017).

[5] In the *Preliminary Results,* Commerce determined to collapse, and treat as a single entity, the mandatory respondent, PT Anugerah Kertas Utama, PT Riau Andalan Kertas, and APRIL Fine Paper Macao Offshore Limited (collectively, APRIL), and its two affiliated parties, PT Sateri Viscose International and A P Fine Paper Trading (Hong Kong) Limited. The collapsed entity is hereinafter collectively referred to as APRIL. *See Preliminary Results* PDM at 3 and 5–6.

| Exporter/producer | Weighted-average dumping margin (percent) |
|---|---|
| PT Anugerah Kertas Utama/PT Riau Andalan Kertas/PT Sateri Viscose International/A P Fine Paper Trading (Hong Kong) Limited/APRIL Fine Paper Macao Offshore Limited (collectively, APRIL) | 0.00 |

**Assessment Rates**

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Because APRIL's weighted-average dumping margin in the final results of this review is zero, we will instruct CBP to liquidate APRIL's entries without regard to antidumping duties. In addition, for entries of subject merchandise during the POR produced by APRIL for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company or companies involved in the transaction. The all-others rate is 2.10 percent.[6] We will also instruct CBP to take into account the ''provisional measures cap'' in accordance with 19 CFR 351.212(d).

Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for APRIL will be zero; (2) for previously-investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 2.10 percent, the all-others rate made effective by the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

**Notification Regarding Administrative Protective Order**

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and sections 19 CFR 351.213(h) and 351.221(b)(5).

Dated: August 6, 2018.

**James Maeder,**

*Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2018–17066 Filed 8–8–18; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders,* 81 FR 11174 (March 3, 2016).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–802]**

### Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Review; 2017–2018

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is rescinding the administrative review, in part, of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (Vietnam) for the period February 1, 2017, through January 31, 2018.

**DATES:** Applicable August 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 16, 2018, based on timely requests for review for 94 companies by Ad Hoc Shrimp Trade Action Committee (the petitioner),[1] 97 companies by the American Shrimp Processors Association (ASPA),[2] and by various Vietnamese companies,[3] Commerce published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Vietnam covering the period February 1, 2017, through January 31, 2018.[4]

On July 11, 2018, Soc Trang Seafood Joint Stock Company withdrew its

[1] *See* the petitioner's Request for Administrative Review, dated February 28, 2018.

[2] *See* ASPA's Request for Administrative Review, dated February 27, 2018.

[3] *See, e.g.,* Soc Trang Seafood Joint Stock Company's submission, ''Request for Review,'' dated February 27, 2018.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 16298 (April 16, 2018) (*Initiation Notice*).

request for administrative review.[5] On July 11, 2018, both the petitioner and ASPA also withdrew their respective requests for an administrative review of Soc Trang Seafood Joint Stock Company and its various name iterations, as listed in the *Initiation Notice.*[6] Subsequently, on July 12, 2018, the petitioner and ASPA also withdrew their respective requests for administrative review of Seavina Joint Stock Company and its various name iterations, as listed in the *Initiation Notice.*[7] No other party requested a review of Seavina Joint Stock Company.

**Partial Rescission of Review**

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. Because all requests for administrative review of Soc Trang Seafood Joint Stock Company and Seavina Joint Stock Company were withdrawn within 90 days of the date of publication of the *Initiation Notice,* and no other interested party requested a review of these companies, Commerce is rescinding this review with respect to Soc Trang Seafood Joint Stock Company and Seavina Joint Stock Company, in accordance with 19 CFR 351.213(d)(1). The administrative review remains active with respect to all other companies initiated for review.

**Assessment**

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period February 1, 2017, through January 31, 2018, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

**Notifications**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 3, 2018.

**James Maeder,**

*Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2018–17051 Filed 8–8–18; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* Soc Trang Seafood Joint Stock Company's Letter, ''Withdrawal of Request for Review,'' dated July 11, 2018.

[6] *See* the petitioners' Submission, ''Domestic Producers' Partial Withdrawal of Review Requests,'' dated July 11, 2018, and ASPA's Submission, ''Partial Withdrawal of Request for Administrative Review,'' dated July 11, 2018.

[7] *See* ASPA's Submissions, ''Partial Withdrawal of Review for Administrative Review,'' dated July 12, 2018 and the petitioner's Submission, ''Partial Withdrawal of Review Requests,'' dated July 12, 2018.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–861]**

### Certain Uncoated Groundwood Paper From Canada: Final Determination of Sales at Less Than Fair Value

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that certain uncoated groundwood paper (UGW paper) from Canada is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2016, through June 30, 2017. The final dumping margins of sales at LTFV are listed below in the ''Final Determination'' section of this notice.

**DATES:** Effective August 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger or Terre Keaton Stefanova, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–1280.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 19, 2018, Commerce published the *Preliminary Determination* of sales at LTFV of UGW paper from Canada, in which we also postponed the final determination to August 1, 2018.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is hereby adopted by this notice.[2]

**Scope of the Investigation**

The product covered by this investigation is UGW paper from Canada. For a complete description of the scope of the investigation, *see* Appendix I.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and

[1] *See Certain Uncoated Groundwood Paper from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 83 FR 11960 (March 19, 2018) (*Preliminary Determination*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Uncoated Groundwood Paper from Canada,'' dated concurrently with this notice (Issues and Decision Memorandum).

Decision Memorandum are identical in content.

**Verification**

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in March and April 2018, we conducted verifications of the sales and cost information submitted by Catalyst Pulp and Paper Sales, Inc. and Catalyst Paper General Partnership (collectively, Catalyst); Resolute FP Canada Inc. and Donohue Malbaie Inc. (collectively, Resolute); and White Birch Paper Canada Company, Papier Masson WB LP, FF Soucy WB LP, and Stadacona WB LP (collectively, White Birch Paper) for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Catalyst, Resolute, and White Birch Paper.[3]

**Changes Since the Preliminary Determination**

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for Catalyst, Resolute, and White Birch Paper. For a discussion of these changes, *see* the ''Margin Calculation'' section of the Issues and Decision Memorandum.

**''All Others'' Rate**

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and margins determined entirely under section 776 of the Act. Section 735(c)(5)(B) of the Act provides that if the estimated weighted-average dumping margins for all individually investigated exporters and producers are zero or *de minimis* or determined entirely under section 776 of the Act, then Commerce may use any reasonable method to establish the estimated all others rate, including averaging the estimated weighted-average dumping margins determined for the individually investigated exporters and producers.

Commerce has continued to calculate zero rates for Resolute and White Birch Paper. Further, because of the substantial change to the scope of this investigation at the time of the *Preliminary Determination,* we find that Catalyst can no longer be considered an ''individually investigated'' exporter or producer, within the meaning of section 735(c) of the Act.[4] Therefore, there are no margins for ''individually investigated'' respondents in this investigation that are not zero. Consequently, we assigned the ''all others'' rate pursuant to section 735(c)(5)(B) of the Act by averaging the margins for the ''individually investigated'' respondents. Specifically, we assigned the zero rate calculated for Resolute and White Birch Paper as the rate for ''all others'' producers and exporters in this investigation.[5]

**Final Determination**

The final estimated weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin (percent) |
|---|---|
| Catalyst Pulp and Paper Sales, Inc. and Catalyst Paper General Partnership | 16.88 |
| Resolute FP Canada Inc. and Donohue Malbaie Inc | 0.00 |
| White Birch Paper Canada Company, Papier Masson WB LP, FF Soucy WB LP, and Stadacona WB LP | 0.00 |
| All Others | 0.00 |

**Disclosure**

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of UGW paper from Canada, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after March 19, 2018, the date of publication of the preliminary determination of this investigation in the **Federal Register**, other than entries of UGW paper produced and exported by Resolute, and produced and exported by White Birch, because their rates are zero. Entries for the companies subject to the ''all others'' rate will be subject to suspension of liquidation at the ''all others'' rate.

Further, Commerce will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.

**International Trade Commission (ITC) Notification**

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either

[3] For discussion of our verification findings, *see* the following memoranda: Memorandum ''Verification of the Cost Response of White Birch Paper Canada Company in the Antidumping Duty Less Than Fair Value Investigation of Uncoated Groundwood Paper from Canada,'' dated April 20, 2018; Memorandum, ''Verification of the Sales Questionnaire Responses of Catalyst Pulp and Paper Sales, Inc. and Catalyst Paper General Partnership (collectively, Catalyst) in the Antidumping Duty Investigation of Certain Uncoated Groundwood Paper from Canada,'' dated May 18, 2018; Memorandum, ''Verification of the Sales Response of White Birch Paper in the Antidumping Investigation of Certain Uncoated Groundwood Paper from Canada,'' dated May 21, 2018; Memorandum, ''Verification of the Sales Response of White Birch Paper in the Antidumping Investigation of Certain Uncoated Groundwood Paper from Canada,'' dated May 24, 2018; Memorandum, ''Verification of the Sales Response of Resolute FP Canada Inc. and Donohue Malbaie Inc. (collectively, Resolute),'' dated May 31, 2018; Memorandum ''Verification of the Cost Response of Catalyst in the Antidumping Duty Investigation of Certain Uncoated Groundwood Paper from Canada,'' dated May 31, 2018; and Memorandum, ''Verification of the Cost Response of Resolute in the Antidumping Duty Investigation of Uncoated Groundwood Paper from Canada,'' dated June 5, 2018.

[4] However, pursuant to section 735(a) of the Act, we continue to reach an affirmative final determination with respect to Catalyst, and we have used the record evidence and verification findings with respect to Catalyst to calculate its weighted-average dumping margin. For further discussion, *see* the Issues and Decision Memorandum at Comment 2.

[5] For further discussion, *see* the Issues and Decision Memorandum at Comment 2.

publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of UGW paper from Canada no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, other than those produced and exported by Resolute, and those produced and exported by White Birch, because their rates are zero, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

**Notification Regarding Administrative Protective Orders (APO)**

This notice serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: August 1, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix I—Scope of the Investigation

The merchandise covered by this investigation includes certain paper that has not been coated on either side and with 50 percent or more of the cellulose fiber content consisting of groundwood pulp, including groundwood pulp made from recycled paper, weighing not more than 90 grams per square meter. Groundwood pulp includes all forms of pulp produced from a mechanical pulping process, such as thermo-mechanical process (TMP), chemi-thermo mechanical process (CTMP), bleached chemi-thermo mechanical process (BCTMP) or any other mechanical pulping process. The scope includes paper shipped in any form, including but not limited to both rolls and sheets.

Certain uncoated groundwood paper includes but is not limited to standard newsprint, high bright newsprint, book publishing, and printing and writing papers. The scope includes paper that is white, off-white, cream, or colored.

Specifically excluded from the scope are imports of certain uncoated groundwood paper printed with final content of printed text or graphic. Also excluded are papers that otherwise meet this definition, but which have undergone a supercalendering process.[6] Additionally, excluded are papers that otherwise meet this definition, but which have undergone a creping process over the entire surface area of the paper.

Also excluded are uncoated groundwood construction paper and uncoated groundwood manila drawing paper in sheet or roll format. Excluded uncoated groundwood construction paper and uncoated groundwood manila drawing paper: (a) Have a weight greater than 61 grams per square meter; (b) have a thickness greater than 6.1 caliper, *i.e.,* greater than .0061'' or 155 microns; (c) are produced using at least 50 percent thermomechanical pulp; and (d) have a shade, as measured by CIELAB, as follows: L* less than or 75.0 *or* b* greater than or equal to 25.0.

Also excluded is uncoated groundwood directory paper that: (a) Has a basis weight of 34 grams per square meter or less; and (b) has a thickness of 2.6 caliper mils or 66 microns or less.

Certain uncoated groundwood paper is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) in several subheadings, including 4801.00.0120, 4801.00.0140, 4802.61.1000, 4802.61.2000, 4802.61.3110, 4802.61.3191, 4802.61.6040, 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.6140, 4802.69.1000, 4802.69.2000, and 4802.69.3000. Subject merchandise may also be imported under several additional subheadings including 4805.91.5000, 4805.91.7000, and 4805.91.9000.[7] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

## Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Changes Since the Preliminary Determination
V. Discussion of the Issues
General
Comment 1: Whether There was Sufficient Industry Support to Initiate this Investigation
Comment 2: Respondent Selection and Calculation of the ''All Others'' Rate
Comment 3: Differential Pricing Methodology
Catalyst
Comment 4: Fixed Asset Impairment for Catalyst
Comment 5: Treatment of Catalyst's Home Market Barter Sales
Comment 6: Treatment of Catalyst's Sales Which May Have Been Destined for Mexico
Comment 7: Insurance Recovery Costs for Catalyst
Comment 8: Catalyst's Home Market Bank Charges
Comment 9: Errors in Catalyst's *Preliminary Determination* Margin Program
Comment 10: Verification Corrections for Catalyst
Resolute
Comment 11: Resolute's Short-Term U.S. Dollar Borrowing Rate
Comment 12: Treatment of Resolute's Corporate Level Costs
VI. Recommendation

[FR Doc. 2018–17020 Filed 8–8–18; 8:45 am]

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[6] Supercalendering imparts a glossy finish produced by the movement of the paper web through a supercalender which is a stack of alternating rollers of metal and cotton (or other softer material). The supercalender runs at high speed and applies pressure, heat, and friction which glazes the surface of the paper, imparting gloss to the surface and increasing the paper's smoothness and density.

[7] The following HTSUS numbers are no longer active as of January 1, 2017: 4801.00.0020, 4801.00.0040, 4802.61.3010, 4802.61.3091, and 4802.62.6040.

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–122–862]**

## Certain Uncoated Groundwood Paper From Canada: Final Affirmative Countervailing Duty Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain uncoated groundwood paper (UGW paper) from Canada. The period of investigation (POI) is January 1, 2016, through December 31, 2016. For information on the estimated subsidy rates, *see* the ''Final Determination'' section of this notice.

**DATES:** Applicable August 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** David Crespo or Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone:

(202) 482–3693 or (202) 482–6274, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

This final determination is made in accordance with section 705 of the Tariff Act of 1930, as amended (the Act). The events that occurred since Commerce published the *Preliminary Determination* [1] on January 16, 2018, are discussed in the Issues and Decision Memorandum, which is hereby adopted by this notice.[2] The Issues and Decision Memorandum also details the changes we made since the *Preliminary Determination* to the subsidy rates calculated for the mandatory respondents and all other producers/exporters. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

## Scope of the Investigation

The product covered by this investigation is UGW paper from Canada. For a complete description of the scope of the investigation, *see* Appendix I.

## Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix II.

## Verification

As provided in section 782(i) of the Act, January 2018 through May 2018 Commerce conducted verifications related to the subsidy information reported by the Government of Canada, British Columbia, Newfoundland and Labrador, Nova Scotia, Ontario, and Québec, as well as Catalyst,[3] Kruger,[4] Resolute,[5] and White Birch.[6] We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.[7]

## Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

## Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to the respondents' subsidy rate calculations since the *Preliminary Determination* and the Post-Preliminary Analysis Memorandum.[9] As a result of these changes, we have also revised the ''all-others'' rate. For a discussion of these changes, *see* the Issues and Decision Memorandum and accompanying memoranda.[10] Although there was a substantial change to the scope of the investigation after the *Preliminary Determination,* we did not, nor did any party suggest, that we collect revised sales or export information from the respondents. Therefore, we have not reconsidered our respondent selection and we continue to treat all respondents as ''individually investigated.''

## ''All-Others'' Rate

In accordance with section 705(c)(1)(B)(i)(I) of the Act, Commerce must determine an estimated ''all-others'' rate for all exporters and producers not individually examined.

[1] *See Certain Uncoated Groundwood Paper from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 2133 (January 16, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum. *See also Certain Uncoated Groundwood Paper from Canada: Amended Preliminary Countervailing Duty Determination,* 83 FR 16050 (April 13, 2018).

[2] *See* Memorandum ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada'' dated concurrently with this notice (Issues and Decision Memorandum).

[3] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Catalyst Paper Corporation: Catalyst Paper, Catalyst Pulp Operations Limited, and Catalyst Pulp and Paper Sales Inc. (collectively Catalyst). These findings are unchanged for purposes of the Final Determination.

[4] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Kruger Trois-Rivieres L.P.: Kruger Publication Papers Inc., Corner Brook Pulp and Paper Limited, Kruger Energy Bromptonville LP, Kruger Holdings L.P., Kruger Holdings GP Inc., and Kruger Inc. (collectively Kruger). These findings are unchanged for purposes of the Final Determination.

[5] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Resolute FP Canada Inc.: Resolute FP Canada, Fibrek General Partnership (Fibrek), and Resolute Growth (collectively Resolute). These findings are unchanged for purposes of the Final Determination.

[6] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with White Birch Paper Canada Company NSULC: Papier Masson WB (White Birch) LP, FF Soucy WB LP, and Stadacona WB LP (collectively White Birch). These findings are unchanged for purposes of the Final Determination.

[7] *See* Memorandum ''Verification of the Questionnaire Responses of Catalyst Paper Corporation,'' dated February 13, 2018; Memorandum ''Verification of the Questionnaire Responses of the Government of British Columbia and, in Part, the Government of Canada,'' dated February 13, 2018; Memorandum ''Verification of the Questionnaire Responses of White Birch Paper Canada Company,'' dated March 28, 2018; Memorandum ''Verification of the Questionnaire Responses of the Government of Newfoundland and Labrador,'' dated April 17, 2018; Memorandum ''Verification of the Questionnaire Responses of the Government of Canada,'' dated April 18, 2018; Memorandum ''Verification of the Questionnaire Responses of the Government of Nova Scotia,'' dated May 18, 2018; Memorandum ''Verification of the Questionnaire Responses of Resolute FP Canada Inc.,'' dated June 6, 2018; Memorandum ''Verification of the Questionnaire Responses of the Government of Québec,'' dated June 6, 2018; Memorandum ''Verification of the Questionnaire Responses of the Government of Ontario,'' dated June 7, 2018; Memorandum ''Verification of Kruger's Questionnaire Responses,'' dated June 7, 2018; and Memorandum ''Verification of the Questionnaire Responses of the Government of Québec,'' dated June 18, 2018.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; *see* section 771(5)(E) of the Act regarding benefit; *see* section 771(5A) of the Act regarding specificity.

[9] *See* Memorandum ''Post-Preliminary Analysis of Countervailing Duty Investigation: Certain Uncoated Groundwood Paper from Canada,'' dated June 18, 2018 (Post-Preliminary Analysis Memorandum).

[10] *See* Memoranda ''Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Final Determination Calculation Memorandum for Catalyst,'' ''Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Final Determination Calculation Memorandum for Resolute FP Canada and its cross-owned affiliates (Resolute),'' ''Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Final Determination Calculation Memorandum for White Birch Paper Canada Company (White Birch),'' and ''Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: All Others Rate Calculation for Final Determination,'' each dated concurrently with this notice.

Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, Commerce will determine an ''all-others'' rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. Where all of the rates for investigated companies are zero or *de minimis,* or based entirely on facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs Commerce to establish an ''all-others'' rate using ''any reasonable method.''

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Catalyst, Kruger, and Resolute that are not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, pursuant to section 705(c)(5)(A) of the Act, Commerce calculated the ''all-others'' rate using a weighted-average of the individual estimated subsidy rates calculated for these examined respondents (excluding the *de minimis* rate determined for White Birch) using each company's business proprietary data for the merchandise under consideration.[11]

## Final Determination

We determine the total estimated net countervailable subsidy rates to be:

| Company | Ad valorem subsidy rate (percent) |
|---|---|
| Catalyst Paper Corporation [12] | 3.38 |
| Kruger Trois-Rivieres L.P [13] | 9.53 |
| Resolute FP Canada Inc [14] | 9.81 |
| White Birch Paper Canada Company NSULC [15] | * 0.82 |
| All-Others | 8.54 |

* (*de minimis*)

## Disclosure

Commerce intends to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

## Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Canada (other than those produced and exported by White Birch because its preliminary rate was *de minimis*), that were entered, or withdrawn from warehouse, for consumption on or after January 16, 2018, the date of publication of the *Preliminary Determination.* In accordance with section 703(d) of the Act, we subsequently instructed CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after May 16, 2018, but to continue the suspension of liquidation of all entries from January 16, 2018, through May 15, 2018 (with the exception entries produced and exported by White Birch).

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act, requiring a cash deposit of estimated CVDs for such entries of subject merchandise, other than those produced and exported by White Birch because its rate is *de minimis,* in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

## International Trade Commission (ITC) Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of UGW paper from Canada no later than 45 days after our final determination.

## Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: August 1, 2018.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

## Appendix I

### Scope of the Investigation

The merchandise covered by this investigation includes certain paper that has not been coated on either side and with 50 percent or more of the cellulose fiber content consisting of groundwood pulp, including groundwood pulp made from recycled paper, weighing not more than 90 grams per square meter. Groundwood pulp includes all forms of pulp produced from a mechanical pulping process, such as thermo-mechanical process (TMP), chemi-thermo mechanical process (CTMP), bleached chemi-thermo mechanical process (BCTMP) or any other mechanical pulping process. The scope includes paper shipped in any form, including but not limited to both rolls and sheets.

Certain uncoated groundwood paper includes but is not limited to standard newsprint, high bright newsprint, book publishing, and printing and writing papers.

[11] *See* Memorandum ''Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: All Others Rate Calculation for Final Determination,'' date concurrently with this notice.

[12] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Catalyst Paper Corporation: Catalyst Paper, Catalyst Pulp Operations Limited, and Catalyst Pulp and Paper Sales Inc. These findings are unchanged for purposes of the Final Determination.

[13] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Kruger Trois-Rivieres L.P.: Kruger Publication Papers Inc., Corner Brook Pulp and Paper Limited, Kruger Energy Bromptonville LP, Kruger Holdings L.P., Kruger Holdings GP Inc., and Kruger Inc.

[14] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Resolute FP Canada Inc.: Resolute FP Canada, Fibrek General Partnership (Fibrek), and Resolute Growth. These findings are unchanged for purposes of the Final Determination.

[15] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with White Birch Paper Canada Company NSULC: Papier Masson WB (White Birch) LP, FF Soucy WB LP, and Stadacona WB LP. These findings are unchanged for purposes of the Final Determination.

The scope includes paper that is white, off-white, cream, or colored.

Specifically excluded from the scope are imports of certain uncoated groundwood paper printed with final content of printed text or graphic. Also excluded are papers that otherwise meet this definition, but which have undergone a supercalendering process.[16] Additionally, excluded are papers that otherwise meet this definition, but which have undergone a creping process over the entire surface area of the paper.

Also excluded are uncoated groundwood construction paper and uncoated groundwood manila drawing paper in sheet or roll format. Excluded uncoated groundwood construction paper and uncoated groundwood manila drawing paper: (a) Have a weight greater than 61 grams per square meter; (b) have a thickness greater than 6.1 caliper, *i.e.,* greater than .0061'' or 155 microns; (c) are produced using at least 50 percent thermomechanical pulp; and (d) have a shade, as measured by CIELAB, as follows: L* less than or 75.0 *or* b* greater than or equal to 25.0.

Also excluded is uncoated groundwood directory paper that: (a) Has a basis weight of 34 grams per square meter or less; and (b) has a thickness of 2.6 caliper mils or 66 microns or less.

Certain uncoated groundwood paper is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) in several subheadings, including 4801.00.0120, 4801.00.0140, 4802.61.1000, 4802.61.2000, 4802.61.3110, 4802.61.3191, 4802.61.6040, 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.6140, 4802.69.1000, 4802.69.2000, and 4802.69.3000. Subject merchandise may also be imported under several additional subheadings including 4805.91.5000, 4805.91.7000, and 4805.91.9000.[17] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

## Appendix II

### List of Topics Discussed in the Issues and Decision Memorandum


Summary
Background
- Case History
- Period of Investigation
- Scope of the Investigation
- Scope Comments

Subsidies Valuation Information
- A. Allocation Period
- B. Attribution of Subsidies
- C. Denominators
- D. Creditworthiness
- E. Equityworthiness
- F. Loan Benchmarks and Interest Rates

Analysis of Programs
- A. Programs Determined To Be Countervailable
- B. Programs Determined Not to Provide Measurable Benefits During the POI
- C. Programs Determined Not To Be Used During the POI
- D. Programs Determined To Be Not Countervailable in this Investigation
- E. Programs Not Further Examined
- F. Programs Deferred Until a Subsequent Administrative Review

Analysis of Comments

General Issues
- Comment 1: Whether Commerce Should Adjust Its Calculation of the All-Others Rate to Exclude Rates Based on AFA
- Comment 2: Whether Commerce Established the Requisite Level of Industry Support for Initiating This Investigation
- Comment 3: Whether Commerce Must Examine the Full Scope of Downstream Effects
- Comment 4: Whether Commerce Properly Requested Respondent Interested Parties to Report ''Other Assistance''
- Comment 5: Whether to Continue to Find Certain Programs Not Used, Not Measurable, or Having No Benefit

Bankruptcy/Change in Ownership Issues
- Comment 6: Whether Subsidies Received Prior to 2011 Were Extinguished by Resolute's Emergence from Bankruptcy
- Comment 7: Whether Resolute's Acquisition of Fibrek Extinguished Any Prior Fibrek Subsidies
- Comment 8: Whether White Birch's Bankruptcy Proceedings Constitute a CIO

Sales Denominator Issues
- Comment 9: Whether Commerce Should Revise Kruger's Denominators
- Comment 10: Whether Commerce Should Revise Resolute's Denominators
- Comment 11: Whether Commerce Should Revise White Birch's Denominators

Unreported Assistance Issues
- Comment 12: Whether Electricity Sold by PREI Provides a Countervailable Subsidy to Catalyst
- Comment 13: Whether Commerce Should Assign an AFA Rate to Kruger for its Failure to Report Payments Related to the Hydro-Québec Connection of Electricity Sub-Station Program
- Comment 14: Whether Commerce Should Assign an AFA Rate for CBPP's Failure to Report Payments Received for Two Studies
- Comment 15: Whether Commerce Should Apply AFA to White Birch's Two Undisclosed Tax Credits

General Stumpage and Wood Fiber LTAR Issues
- Comment 16: Whether Commerce Must Use In-Jurisdiction Benchmarks to Determine Whether a Benefit Has Been Provided
- Comment 17: Whether Commerce Must Conduct a Stumpage Pass-Through Analysis
- Comment 18: Whether Woodchips from Sawmills Are Subsidized
- Comment 19: Whether Commerce Must Compare Average Benchmark Prices to Average Transaction Prices

Ontario Stumpage Issues
- Comment 20: Whether Pulpwood is Subsidized
- Comment 21: Whether Ontario's Stumpage Market is Distorted

Québec Stumpage Issues
- Comment 22: Whether Québec's Public Stumpage Market Is Distorted
- Comment 23: Whether Commerce Erred in Calculating a Benefit for White Birch under the Provision of Stumpage for LTAR Program

Nova Scotia Benchmark Issues
- Comment 24: Whether Commerce Should Use a Nova Scotia Benchmark as a Basis of Finding Subsidization of Stumpage in Ontario and Québec
- Comment 25: Whether the Nova Scotia Benchmark Should be Adjusted

Log Export Restraint Issues
- Comment 26: Whether the Log and Wood Residue Export Restraints Provide a Financial Contribution
- Comment 27: Whether the Export Permitting Process Materially Restrains Export Activity
- Comment 28: Whether to Apply Adverse Inferences to Catalyst's Log Delivery Costs
- Comment 29: Whether Commerce May Use NAWFR Benchmark Information
- Comment 30: The Appropriate Benchmark Source for the British Columbia Log and Wood Residue Export Restraints
- Comment 31: Whether to Exclude U.S. Exports to the UAE from the Benchmark Data
- Comment 32: The Appropriate Freight Amounts to Apply to the Benchmark Values
- Comment 33: The Appropriate Freight Amounts to Apply to Catalyst's Purchases of Woodchips, Sawdust, and Hog Fuel
- Comment 34: Whether Commerce Should Exclude Logs and Chips Dedicated to the Production of Kraft Pulp
- Comment 35: Whether to Account for Negative Transactions in Catalyst's Wood Purchase Database

Purchase of Goods for MTAR Issues
- Comment 36: Whether the Purchase of Electricity was a Purchase of a Good or Service
- Comment 37: Whether Commerce Erred in Using Sales of Electricity as the Benchmark for Provincial Utility Purchases of Electricity
- Comment 38: Whether Purchases of Electricity Were ''Market Based''
- Comment 39: Whether Commerce Should Use a Different Benchmark for Purchases of Electricity from the IESO
- Comment 40: Whether Commerce Used the Wrong Benchmark for Countervailing Hydro-Québec's Purchases of Electricity from KEBLP
- Comment 41: Whether the Provincial Utility Purchases of Electricity Are Tied to Sales of Non-Subject Merchandise
- Comment 42: Whether Commerce Should Countervail BC Hydro's EPAs
- Comment 43: Whether Commerce Used the Wrong Benchmark for Countervailing BC Hydro's Purchases of Electricity
- Comment 44: The Appropriate Benefit Calculation for BC Hydro EPAs


[16] Supercalendering imparts a glossy finish produced by the movement of the paper web through a supercalender which is a stack of alternating rollers of metal and cotton (or other softer material). The supercalender runs at high speed and applies pressure, heat, and friction which glazes the surface of the paper, imparting gloss to the surface and increasing the paper's smoothness and density.

[17] The following HTSUS numbers are no longer active as of January 1, 2017: 4801.00.0020, 4801.00.0040, 4802.61.3010, 4802.61.3091, and 4802.62.6040.

Comment 45: Whether BC Hydro's EPAs are *De Facto* Specific
Comment 46: Whether Commerce Should Include all Elements of Kruger's Electric Service Rates in its Benchmark
Comment 47: Whether Hydro-Québec's Purchase of Electricity for MTAR was Specific
Comment 48: Whether the IESO Purchases Electricity
Comment 49: Whether the IESO's Purchase of Electricity for MTAR is Specific
Comment 50: Whether Commerce Should Countervail Tariff 29 and/or Use it as a Benchmark
Comment 51: Whether the Government of Canada's Provision of C$130 Million for Resolute's Expropriated Assets Provides a Benefit
Tax Program Issues
Comment 52: Whether the ACCA for Class 29 Assets Tax Program is Specific
Comment 53: Whether the School Tax Credit for Class 4 Major Industrial Properties Provides a Financial Contribution
Comment 54: Whether the School Tax Credit for Class 4 Major Industrial Properties is Specific
Comment 55: Whether the Coloured Fuel Tax Rate Provides a Financial Contribution
Comment 56: Whether the Coloured Fuel Tax Rate is Specific
Comment 57: Whether Catalyst Benefited from the Coloured Fuel Tax Rate
Comment 58: Whether the Powell River City Tax Exemption Program Provides a Financial Contribution
Comment 59: The Appropriate Benefit Calculation for the Powell River City Tax Exemption Program
Comment 60: Whether Commerce Properly Determined the Amount of the Subsidy Kruger Received from Property Tax Exemptions
Comment 61: Whether the Québec SR&ED Tax Credit [18] is *De Facto* Specific
Comment 62: Whether the Tax Credit for the Acquisition of Manufacturing and Processing Equipment in Québec is Specific
Comment 63: Whether the Tax Credit for Pre-Competitive Research is Specific
Comment 64: Whether the Credit for Fees and Dues Paid to a Research Consortium is Specific
Comment 65: Whether Québec's Tax Credit for Construction and Repair of Roads and Bridges Provides a Financial Contribution and a Benefit
Grant Program Issues: Electricity
Comment 66: Whether Agreements to Curtail Consumption of Electricity are Grants
Comment 67: Whether the Power Smart Subprograms are *De Jure/De Facto* Specific
Comment 68: The Appropriate Benefit for the Power Smart: Load Curtailment Program
Comment 69: The Correct Calculation for the BC Hydro Power Smart TMP and Incentives Subprograms
Comment 70: Whether Hydro-Québec's IEO Program Is Specific
Comment 71: Whether Hydro-Québec's Industrial Systems Program/Energy Efficiency Program is Countervailable
Comment 72: Whether the Hydro-Québec Special L Rate for Industrial Customers Affected by Budworm Confers a Benefit
Comment 73: Whether the IESO Demand Response Is Specific
Comment 74: Whether the Ontario IEI Program is Specific
Comment 75: Whether the Ontario IEI Program is Tied to Non-Subject Merchandise
Comment 76: Whether Capacity Assistance Payments to CBPP Are Specific
Comment 77: Whether the Capacity Assistance Fees Paid to CBPP Provided a Benefit
Grant Program Issues: Other
Comment 78: Whether the Canada-BC Job Grant Program is Specific
Comment 79: Whether Emploi-Québec Programs are Specific
Comment 80: Whether Emploi-Québec Programs are Recurring
Comment 81: Whether the PCIP Provides a Benefit
Comment 82: Whether the Paix des Braves Program Provides a Countervailable Benefit
Comment 83: Whether the Investment Program in Public Forests Affected by Natural or Anthropogenic Disturbance Provides a Countervailable Benefit
Comment 84: Whether the FPInnovations Ash Development Project Provides a Countervailable Benefit
Comment 85: Whether the PAREGES Program is Specific and Confers a Benefit
Comment 86: Whether the Ontario Forest Roads Funding Program is Countervailable
Comment 87: Whether the EcoPerformance Program is Specific and Confers a Benefit
Equity Program Issues
Comment 88: Whether Preferred Shares Issued by Kruger Inc./KPPI in 2012 were Debt or Equity
Comment 89: Whether Any Benefit in the 2012 Debt-to-Equity Conversion Is Attributable to Kruger Inc.
Comment 90: How to Determine the Benefit for KPPI's 2012 Loan Forgiveness
Comment 91: Whether IQ's 2015 Investment in KHLP Was Tied to Non-Subject Merchandise
Comment 92: Whether the Equityworthiness Analysis for KHLP in 2015 is Correct
Comment 93: Whether KHLP was Equityworthy
Loan Program Issues
Comment 94: Whether CBPP was Creditworthy
Comment 95: Whether Commerce Erred in Calculating the Benchmark for CBPP's 2014 Loan
Comment 96: Whether Interest Due from the Government of Newfoundland and Labrador Loan to CBPP and Paid in 2017 Provided No Benefit in the POI
Comment 97: Whether Commerce Erred in Its Benefit Calculation for the IQ Loan Guarantee to KEBLP
Company-Specific Issues
Catalyst
Comment 98: How to Treat Catalyst's Unreported Log and Wood Fiber Purchases
Resolute
Comment 99: Whether Commerce Should Use Resolute's Revised SR&ED Tax Credit
White Birch
Comment 100: Whether Commerce Correctly Determined the Dates of Approval for the MFOR Worker Training Grants to White Birch's Stadacona Mill
Conclusion

[18] Also called the Québec Scientific Research and Development Tax Credit in the *Preliminary Determination.*

[FR Doc. 2018–17017 Filed 8–8–18; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–475–819]**

### Certain Pasta From Italy: Preliminary Results of Countervailing Duty Administrative Review and Partial Rescission; 2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain pasta from Italy. The period of review (POR) is January 1, 2016, through December 31, 2016.

**DATES:** Applicable August 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1785.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 13, 2017, Commerce published a notice of initiation of an administrative review of the CVD order on certain pasta from Italy for the POR.[1] From October 10, 2017 to December 12, 2017, eight of the producers/exporters of subject merchandise subject to this review timely withdrew their request for review. Thus, we are rescinding this review with respect to these eight producers/exporters. Commerce is conducting this review of one remaining producer/exporter of subject merchandise: GR.A.M.M. S.r.l.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 42974 (September 13, 2017) (*Initiation Notice*).

(GR.A.M.M.). On March 29, 2018, Commerce postponed the deadline for issuing the preliminary results of this administrative review until August 3, 2018.[2] For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is provided in the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

## Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions. A full description of the scope of the order is contained in the Preliminary Decision Memorandum, which is hereby adopted by this notice.[4]

## Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review.'' The requests for review for the following companies were withdrawn within the 90-day limit: Alessio Panarese Soceieta Agricola, Antico Pastificio Morelli 1860 S.r.l., Colussi Spa, Ghigi 1870 S.p.A., Industria Alimentare Colavita, S.p.A., Pastificio Fratelli DeLuca S.r.l., Pastificio Mennucci SpA, and Tesa SrL.[5] Therefore, Commerce is rescinding the review, in part, with respect to these companies.

## Methodology

We are conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

## Preliminary Results of the Review

We preliminarily find the following net countervailable subsidy rate for the mandatory respondent, GR.A.M.M. for the period January 1, 2016 through December 31, 2016:

| Company | Net subsidy rate *ad valorem* |
|---|---|
| GR.A.M.M. S.r.l ..... | 1.21 percent. |

## Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. For companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2016, through December 31, 2016, in accordance with 19 CFR 351.212(c)(1)(i). We intend to issue instructions to CBP 15 days after publication of the final results of this review.

## Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for GR.A.M.M. with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Disclosure and Public Comment

We will disclose to parties in this review the calculations performed in reaching the preliminary results within five days of publication of these preliminary results.[7] Interested parties may submit written comments (case briefs) on the preliminary results no later than 30 days from the date of publication of this **Federal Register** notice, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[8] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] All briefs must be filed electronically using ACCESS.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number

[2] *See* Memorandum, ''Certain Pasta from Italy: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review,'' dated March 29, 2018.

[3] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Countervailing Duty Administrative Review and Partial Rescission: Certain Pasta from Italy; 2016,'' dated concurrently with, and hereby adopted by, this notice (*Preliminary Decision Memorandum*).

[4] *See Preliminary Decision Memorandum.*

[5] *See* Tesa SrL's, ''Pasta from Italy; Withdrawal of Request for Administrative Review,'' dated October 10, 2017; *see also* Ghigi 1870 S.p.A.'s, ''Pasta from Italy; Withdrawal of Request for Administrative Review,'' dated October 17, 2017; *see also* Industria Alimentare Colavita, S.p.A.'s Letter, ''Certain Pasta from Italy: Withdrawal of Request for CVD Administrative Review of Indalco S.p.A.,'' dated December 10, 2017; *see also* Pastificio Mennucci SpA's Letter, ''Pasta from Italy; Withdrawal of Request for Administrative Review,'' dated December 12, 2017; *see also* Colussi Spa's Letter, ''Pasta from Italy; Withdrawal of Request for Administrative Review,'' dated December 12, 2017; *see also* Alessio Panarese Soceieta Agricola's, Pastificio Fratelli DeLuca S.r.l.'s, and Antico Pastificio Morelli 1860 S.r.l.'s Letter, ''Certain Dry Pasta from Italy, C–475–819; Withdrawal of Request for Review,'' dated December 12, 2017.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution, section 771(5)(E) of the Act regarding benefit, and section 771(5A) of the Act regarding specificity.

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[9] 19 CFR 351.309(c)(2) and (d)(2).

of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[10] Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), unless this deadline is extended.

These preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: August 3, 2018.

**James Maeder,**

*Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

## Appendix

List of Topics Discussed in the Preliminary Decision Memorandum:

I. Summary
II. Background
III. Scope of the Order
IV. Partial Rescission of the Administrative Review
V. Subsidy Valuation Information
VI. Analysis of Programs
VII. Recommendation

[FR Doc. 2018–17048 Filed 8–8–18; 8:45 am]

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[10] *See* 19 CFR 351.310(d).

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–992]**

### Monosodium Glutamate From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2016–2017

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that the 27 companies subject to this administrative review are part of the China-wide entity because none filed a separate rate application (SRA) and/or a separate rate certification (SRC). The period of review (POR) is November 1, 2016, through October 31, 2017. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable August 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Chloee Sagmoe or Kathryn Wallace, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone at (202) 482–2000 or (202) 482–6251.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 1, 2017, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on monosodium glutamate (MSG) from the People's Republic of China (China).[1] In response, on November 30, 2017, Ajinomoto North America, Inc. (the petitioner) requested a review of 27 companies.[2] Commerce initiated a review of all 27 companies on January 11, 2018.[3] For a list of these companies, see the Appendix to this notice. The deadline for interested parties to submit an SRA or an SRC was February 11, 2018.[4] No party submitted an SRA or an SRC. On May 5, 2018, the petitioner requested that Commerce place the Remand Redetermination of the investigation of MSG from China[5] on the record of this proceeding.[6] The petitioners asked that Commerce utilize the recalculated dumping margin of mandatory respondent, Meihua Bio-Technology Co., Ltd. (Mehia), as the basis for the China-wide entity rate.[7] No other party filed comments.

### Scope of the Order

The product covered by this order is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this order regardless of physical form (including, but not limited to, in monohydrate or anhydrous form, or as substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging. MSG in monohydrate form has a molecular formula of $C_5H_8NO_4Na—H_2O$, a Chemical Abstract Service (CAS) registry number of 6106–04–3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U. MSG in anhydrous form has a molecular formula of $C_5H_8NO_4Na$, a CAS registry number of l42–47–2, and a UNII number of C3C196L9FG. Merchandise covered by the scope of this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2922.42.10.00. Merchandise subject to the order may also enter under HTS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. The tariff classifications, CAS registry numbers, and UNII numbers are provided for convenience and customs purposes; however, the written description of the scope is dispositive.[8]

### Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

### Preliminary Results of Review

As noted above, the petitioner asked Commerce to place the Remand Redetermination on the record of this proceeding and to use that information to calculate a dumping margin for the China-wide entity equal to the highest transaction-specific margin calculated for Meihua.[9] We have not done so. Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 50620 (November 1, 2017).

[2] *See* Ajinomoto's letter, ''Monosodium Glutamate from China: Request for Administrative Review,'' (November 30, 2017), at Attachment 1 (listing 27 companies for which Ajinomoto sought a review).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 1329 (January 11, 2018) (*Initiation Notice*).

[4] *See Initiation Notice.*

[5] *See* Remand Redetermination in the Antidumping Duty Investigation of Monosodium Glutamate from the People's Republic of China: Analysis Memorandum for Langfang Meihua Bio-Technology Co., Ltd. dated August 7, 2017 filed in the Ajinomoto North America, Inc. v. United States, Court No. 14–00351, Slip Op. 17–48 (April 25, 2017) (Remand Redetermination).

[6] *See* Ajinomoto's letter, ''Antidumping Duty Review of Monosodium Glutamate from China: Comments on PRC-Wide AFA Rate,'' (May 7, 2018).

[7] *Id.*

[8] *See Monosodium Glutamate from the People's Republic of China: Second Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Order,* 80 FR 487 (January 6, 2015).

[9] *See* Ajinomoto's letter, ''Antidumping Duty Review of Monosodium Glutamate from China: Comments on PRC-Wide AFA Rate,'' (May 7, 2018).

reviews.[10] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[11] In this administrative review, no party requested a review of the China-wide entity. Moreover, we have not self-initiated a review of the China-wide entity. Because no review of the China-wide entity is being conducted, the China-wide entity's entries are not subject to the review and the rate applicable to the NME entity is not subject to change as a result of this review.

None of the 27 companies subject to this review filed an SRA or an SRC. Commerce preliminarily determines that these companies have not demonstrated their eligibility for separate rate status and are part of the China-wide entity. Commerce also preliminarily determines that the 27 companies subject to review are part of the China-wide entity. The China-wide entity rate is 40.41 percent.[12]

## Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), within 30 days after the date of publication of these preliminary results of review.[13] ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit in room B8024 of the main Commerce building. Rebuttal briefs, limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[14] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.[15]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to Commerce within 30 days of the date of publication of this notice.[16] Requests should contain: (1) The party's name, address, and telephone number; (2) The number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230.[17] Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

## Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.[18] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the companies under review that we determine in the final results to be part of the China-wide entity at the China-wide entity rate of 40.41 percent. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of this review in the **Federal Register**.[19]

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For companies that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.,* 40.41 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 315.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: August 3, 2018.

**Christian Marsh,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

## Appendix—List of Companies Covered by this Review

1. Anhui Fresh Taste International Trade Co., Ltd.
2. Baoji Fufeng Biotechnologies Co., Ltd.
3. Blu Logistics (China) Co., Ltd.
4. Bonroy Group Limited
5. Forehigh Trade and Industry Co., Ltd.
6. Fujian Province Jianyang Wuyi MSG Co., Ltd.
7. Golden Banyan Foodstuffs Industry Co., Ltd.
8. Henan Lotus Flower Gourmet Powder Co.
9. Hong Kong Sungiven International Food Co., Limited
10. Hulunbeier Northeast Fufeng Biotechnologies Co., Ltd.
11. K&S Industry Limited
12. King Cheong Hong International
13. Langfang Meihua Bio-Technology Co., Ltd.
14. Liangshan Linghua Biotechnology Co., Ltd.
15. Lotus Health Industry Holding Group
16. Meihua Group International Trading (Hong Kong) Limited,
17. Meihua Holdings Group Co., Ltd., Bazhou Branch
18. Neimenggu Fufeng Biotechnologies Co., Ltd.

[10] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[11] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[12] *See Monosodium Glutamate from the People's Republic of China: Second Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order,* 80 FR 487 (January 6, 2015).

[13] *See* 19 CFR 351.309(c)(1)(ii).

[14] *See* 19 CFR 351.309(d)(1) and (2).

[15] *See* 19 CFR 351.309(c) and (d); *see also* 19 CFR 351.303 (for general filing requirements).

[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 310(d).

[18] *See* 19 CFR 351.212(b)(1).

[19] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

19. Pudong Prime Int'l Logistics, Inc.
20. Qinhuangdao Xingtai Trade Co., Ltd.
21. S.D. Linghua M.S.G. Incorporated Co.
22. Shandong Linghua Monosodium Glutamate Incorporated Company
23. Shanghai Totole Food Ltd.
24. Shijiazhuang Standard Imp & Exp Co., Ltd.
25. Sunrise (HK) International Enterprise Limited
26. Tongliao Meihua Biological Sci-Tech Co., Ltd.
27. Zhejiang Medicines & Health

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–557–816]**

### Certain Steel Nails From Malaysia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2016–2017

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on certain steel nails from Malaysia. This review covers the sales of two mandatory respondents, both of which we preliminarily determine to have made sales at less than normal value during the period of review, covering July 1, 2016, through June 30, 2017. In addition, we are rescinding the review in part with respect to 15 companies for which the request for review was timely withdrawn.

**DATES:** Applicable August 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Edythe Artman or Madeline Heeren, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3931 or (202) 482–9179, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

These preliminary results of review are made in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). On September 13, 2017, Commerce published the notice of initiation for the administrative review.[1] For a complete description of the events that followed the initiation of the review, *see* the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and to all parties in the Central Records Unit, located in room B8094 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

#### Scope of the Order

The products covered by the scope of the order are certain steel nails from Malaysia. For a complete description of the scope, *see* Appendix I of this notice.

#### Partial Rescission of Administrative Review

In the *Initiation Notice,* we initiated a review of 19 companies. Subsequently, the petitioner, Mid Continent Steel & Wire, Inc., withdrew its request for review of 15 of the companies. No other parties had requested a review of these companies. Thus, in response to the petitioner's timely filed withdrawal request and pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of the following companies: Airlift Trans Oceanic Pvt. Ltd.; Astrotech Steels Private Ltd.; Caribbean International Co. Ltd.; Dahnay Logistics Pvt. Ltd.; Flyjac Logistics Private Ltd.; Full Well Freight (Thailand) Co.; Hecny Transportation; Jinhai Hardware Co. Ltd.; Orient Containers Sdn. Bhd.; Orient Express Container Co., Ltd.; Scanwell Logistics (Malaysia) Sdn Bhd; Shanghai Haoray International Trade Co. Ltd.; Sino Connections Logistics; Tag Fasteners Sdn. Bhd.; and Topocean Consolidation Services.

#### Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. For a full description of the methodology underlying the preliminary results, *see* the Preliminary Decision Memorandum.

#### Preliminary Results of Review

We preliminarily determine that, for the period July 1, 2016, through June 30, 2017, the following weighted-average dumping margins exist:[3]

| Producer/exporter | Weighted-average dumping margin (percent) |
|---|---|
| Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd | 0.00 |
| Region International Co. Ltd. and Region System Sdn. Bhd | 1.33 |

#### Disclosure and Public Comment

Commerce will disclose to parties to the proceeding any calculations performed in connection with these preliminary results of review within five days after the date of publication of this notice.[4] Interested parties may submit case briefs no later than seven days after the date on which the last verification report is issued in this administrative review.[5] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the deadline for filing case briefs.[6] Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7] Case and rebuttal briefs should be filed using ACCESS.[8]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice.[9] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 42974 (September 13, 2017) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Steel Nails from Malaysia; 2016–2017'', dated concurrently with this notice (Preliminary Decision Memorandum).

[3] Commerce has preliminarily determined to collapse, and treat as a single entity, affiliates Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd. (collectively, Inmax) and Region International Co. Ltd. and Region System Sdn. Bhd. (collectively Region). For a full discussion of the collapsing criteria, *see* the company-specific analysis memorandum, dated concurrently with this notice.

[4] *See* 19 CFR 351.224(b).

[5] *See* 19 CFR 351.309(c)(1)(ii).

[6] *See* 19 CFR 351.309(d)(1).

[7] *See* 19 CFR 351.309(c)(2) and (d)(2).

[8] *See* 19 CFR 351.303.

[9] *See* 19 CFR 351.310(c).

Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[10] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless extended, Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

## Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[11] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[12] We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Inmax and Region listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 2.66 percent. These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

## Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and sections 19 CFR 351.213(h)(1) and 351.221(b)(4).

Dated: August 3, 2018.

**Christian Marsh,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

## Appendix I—Scope of the Order

The merchandise covered by the antidumping duty order is certain steel nails having a nominal shaft length not exceeding 12 inches.[13] Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope of this order are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of i) medical, surgical, dental or veterinary furniture; and ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this order are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of this order are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this order are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of this order are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this order are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Certain steel nails subject to this order are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30,

[10] *See* 19 CFR 351.310(d).

[11] *See* 19 CFR 351.212(b).

[12] *See* section 751(a)(2)(C) of the Act.

[13] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this order also may be classified under HTSUS subheadings 7907.00.60.00, 7806.00.80.00, 7318.29.00.00, 8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

### Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Partial Rescission of Administrative Review
5. Collapsing of Affiliated Companies
6. Date of Sale
7. Comparisons to Normal Value
   A. Determination of Comparison Method
   B. Results of the Differential Pricing Analysis
8. Product Comparisons
9. Export Price
10. Normal Value
   A. Home Market Viability as Comparison Market
   B. Level of Trade
   C. Sales to Affiliates
   D. Cost of Production
1. Cost Averaging Methodology
   A. Significance of Cost Changes
   B. Linkage Between Sales and Cost Information
2. Calculation of COP
3. Test of Comparison Market Sales Prices
4. Results of the Cost of Production Test
   E. Calculation of Normal Value Based on Comparison Market Prices
   F. Price-to-Constructed Value Comparison
11. Currency Conversion
12. Verification
13. Recommendation

[FR Doc. 2018–17050 Filed 8–8–18; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* International Dolphin Conservation Program.

*OMB Control Number:* 0648–0387.

*Form Number(s):* None.

*Type of Request:* Regular (extension of a currently approved information collections).

*Number of Respondents:* 279.

*Average Hours per Response:* 35 minutes for a vessel permit application; 10 minutes for an operator permit application, a notification of vessel arrival or departure, a change in permit operator; a notification of a net modification or a monthly tuna storage removal report; 30 minutes for a request for a waiver to transit the ETP without a permit (and subsequent radio reporting) or for a special report documenting the origin of tuna (if requested by the NOAA Administrator); 10 hours for an experimental fishing operation waiver; 15 minutes for a request for a Dolphin Mortality Limit; 35 minutes for written notification to request active status for a small tuna purse seine vessel; 5 minutes for written notification to request inactive status for a small tuna purse seine vessel or for written notification of the intent to transfer a tuna purse seine vessel to foreign registry and flag; 60 minutes for a tuna tracking form or for a monthly tuna receiving report; 30 minutes for IMO application or exemption request; 30 minutes for chain of custody recordkeeping reporting requirement.

*Burden Hours:* 248.

*Needs and Uses:* This request is to extend this information collection.

National Oceanic and Atmospheric Administration (NOAA) collects information to implement the International Dolphin Conservation Program Act (Act). The Act allows entry of yellowfin tuna into the United States (U.S.), under specific conditions, from nations in the International Dolphin Conservation Program that would otherwise be under embargo. The Act also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean (ETP) on terms equivalent with the vessels of other nations. NOAA collects information to allow tracking and verification of ''dolphin-safe'' and ''non-dolphin safe'' tuna products from catch through the U.S. market.

The regulations implementing the Act are at 50 CFR parts 216 and 300. The recordkeeping and reporting requirements at 50 CFR parts 216 and 300 form the basis for this collection of information. This collection includes permit applications, notifications, tuna tracking forms, reports, and certifications that provide information on vessel characteristics and operations in the ETP, the origin of tuna and tuna products, chain of custody recordkeeping requirements and certain other information necessary to implement the Act.

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Frequency:* On occasion, monthly and upon request.

*Respondent's Obligation:* Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: August 6, 2018.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2018–17056 Filed 8–8–18; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG383**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Gustavus Ferry Terminal Improvements Project

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; proposed issuance of an Incidental Harassment Authorization; request for comments.

**SUMMARY:** NMFS has received a request from the Alaska Department of Transportation and Public Facilities (ADOT&PF) to issue an incidental harassment authorization (IHA) for activities that were not conducted under an existing IHA. NMFS previously issued an IHA to ADOT&PF to incidentally take seven species of marine mammal, by Level A and Level B harassment, during construction activities associated with the Gustavus Ferry Terminal Improvements project in Gustavus, Alaska. The IHA, issued on April 4, 2017 (82 FR 17209; April 10, 2017), is valid from December 15, 2017 through December 14, 2018. However, ADOT&PF was unable to conduct any of the work and, therefore, has requested that NMFS re-issue the IHA with the dates changed to accommodate the analyzed work with minor modifications to the number of piles driven. The proposed IHA would authorize work for the ferry

improvements project between December 15, 2018 and December 14, 2019. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on the proposed issuance of an IHA to incidentally take marine mammals during the specified activities. Take numbers would be the same as authorized previously, and the mitigation, monitoring, and reporting requirements would remain the same as authorized for the 2017–2018 IHA referenced above.

**DATES:** Comments and information must be received no later than September 10, 2018.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.pauline@noaa.gov.*

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online *at https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application, supporting documents, list of the references cited in this document, **Federal Register** notice of proposed IHA (81 FR 40852; June 23, 2016), **Federal Register** notice of issuance of the final 2017–2018 IHA (82 FR 17209; April 10, 2017) and the issued 2017–2018 IHA may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

## National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

## History of Request

On July 31, 2015, NMFS received an application from ADOT&PF requesting the take of marine mammals incidental to reconstructing the existing ferry terminal at Gustavus, Alaska, referred to as the Gustavus Ferry Terminal. NMFS published a notice of a proposed IHA and request for comments in the **Federal Register** on June 23, 2016 (81 FR 40852). We subsequently published the final notice of our issuance of the IHA on April 10, 2017 (82 FR 17209), making the IHA valid for December 15, 2017 through December 14, 2018. In-water work associated with the project was expected to be completed within the one-year timeframe of the IHA. The specified activities were expected to result in the take of seven species of marine mammals including harbor seal (*Phoca vitulina*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*), and minke whale (*Balaenoptera acutorostrata*).

On May 8, 2018, ADOT&PF informed NMFS that work on the project would be postponed due to design revisions and local community considerations and that no work would be completed under the 2017–2018 IHA. ADOT&PF requested that a new IHA be issued that would be valid from December 15, 2018 through December 14, 2019. Under this proposed IHA, ADOT&PF would conduct pile driving activities between the in water work window dates of March 1, 2019, through May 31, 2019 and September 1, 2019, through November 30, 2019. Although the proposed activities would undergo minor modifications, the number of authorized takes would remain unchanged from those listed in the 2017–2018 Authorization.

*Description of the Proposed Activity and Anticipated Impacts*

The 2018–2019 proposed IHA would cover the same construction associated with the modernization of the Gustavus Ferry Terminal that the 2017–2018 did, with minor revisions to the number and types of piles that would be installed and removed. NMFS refers the reader to the documents related to the previously issued 2017–2018 IHA for more detailed description of the project activities. These previous documents include the **Federal Register** notice of the issuance of the 2017–2018 IHA for ADOT&PF's Gustavus Ferry Terminal Improvements project (82 FR 17209; April 10, 2017), ADOT&PF's application, the **Federal Register** notice of the proposed IHA (81 FR 40852; June 23, 2016) and all associated references and documents. A detailed description of the proposed vibratory and impact pile driving activities at the ferry terminal improvements project is found in these documents. The description remains accurate with the exception of the minor modifications noted above.

*Detailed Description of the Action*

Differences between the 2017–2018 IHA and the proposed 2018–2019 IHA are shown in Table 1. Generally speaking, pile driving and removal would occur over the same number of days (50) with installation and removal of 16 additional piles over 21 additional hours. These changes represent a 3.5 percent increase in the number of piles installed and a 21.9 percent increase in the number of piles removed. The duration of impact driving would remain the same while the time spent vibratory driving would increase by 18.4 percent. The additional time required for vibratory driving is due to the increase in anticipated number of piles removed. Note that these proposed changes would have a nominal impact on the calculated Level A harassment isopleths and no effect on Level B harassment isopleths. Therefore, the sizes of the Level A harassment and Level B harassment zones would remain unchanged.

TABLE 1—GUSTAVUS FERRY PILE INSTALLATION AND REMOVAL SUMMARY

| Pile size (inches) | Number of piles—2017–2018 IHA | Number of piles—2018–2019 Proposed IHA |
|---|---|---|
| 30 | 14 | 18. |
| 24 | 40 | 34 install/12 remove. |
| 18 | 0 | 4 remove. |
| 16 | 0 | 4 install/4 remove. |
| 12.75 | 3 install/16 remove | 3 install/9 remove. |
| Total installed/total Piles | 57/73 | 59/89. |

| Driving time duration | 2017–2018 IHA (hours) | 2018–2019 Proposed IHA (hours) |
|---|---|---|
| Impact Driving | 57 | 57. |
| Vibratory Driving | 114 | 135. |
| Total | 171 | 192. |

*Description of Marine Mammals*

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to the proposed 2018–2019 IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the 2017–2018 IHA.

*Potential Effects on Marine Mammals*

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in these previous documents, which remains applicable to the issuance of the proposed 2018–2019 IHA. There is no new information on potential effects.

*Estimated Take*

A detailed description of the methods and inputs used to estimate authorized take is found in these previous documents. The methods of estimating take for the proposed 2018–2019 IHA are identical to those used in the 2017–2018 IHA. The source levels remain unchanged from the previously issued IHA, and NMFS' 2016 acoustic technical guidance was used to address new acoustic thresholds in the notice of issuance of the 2017–2018 IHA. Specifically, observational data was used to calculate daily take rates in the absence of density data. Since the number of pile-driving days (50) planned for both the 2017–2018 IHA and the proposed 2018–2019 IHA are the same, the total estimated take projections will be identical.

*Description of Proposed Mitigation, Monitoring and Reporting Measures*

A description of proposed mitigation, monitoring, and reporting measures is found in the previous documents, which are identical to those contained in this proposed 2018–2019 IHA. The following measures would apply to ADOT&PF's mitigation requirements:

- Establishment of Shutdown Zone—For all pile driving activities, ADOT&PF will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). In this case, shutdown zones are intended to contain areas in which sound pressure levels (SPLs) equal or exceed acoustic injury criteria for some authorized species, based on NMFS' acoustic technical guidance published in the **Federal Register** on August 4, 2016 (81 FR 51693).
- Establishment of Monitoring Zones—ADOT&PF must identify and establish Level A harassment zones. These zones are areas beyond the shutdown zones where animals may be

exposed to sound levels that could result in permanent threshold shift (PTS). ADOT&PF will also identify and establish Level B harassment disturbance zones which are areas where SPLs equal or exceed 160 dB rms for impact driving and 120 dB rms during vibratory driving. Observation of monitoring zones enables observers to be aware of and communicate the presence of marine mammals in the project area and outside the shutdown zone and thus prepare for potential shutdowns of activity. NMFS has established monitoring protocols described in the **Federal Register** notice of the issuance (82 FR 17209; April 10, 2017) which are based on the distance and size of the monitoring and shutdown zones. These same protocols are contained in this proposed 2018–2019 IHA.

• Temporal and Seasonal Restrictions—Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted and all in-water construction will be limited to the periods between March 1 and May 31, 2018, and September 1 and November 30, 2018.

• Soft Start—The use of a soft-start procedure is believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to implement soft start procedures. Soft Start is not required during vibratory pile driving and removal activities.

• Visual Marine Mammal Observation—Monitoring must be conducted by qualified marine mammal observers (MMOs), who are trained biologists, with minimum qualifications described in the **Federal Register** notice of the issuance of the 2017–2018 IHA (82 FR 17209; April 4, 2017). In order to effectively monitor the pile driving monitoring zones, two MMOs must be positioned at the best practical vantage point(s). If waters exceed a sea-state which restricts the observers' ability to make observations within the shutdown zone (*e.g.,* excessive wind or fog), pile installation and removal will cease. Pile driving will not be initiated until the entire shutdown zone is visible. MMOs shall record specific information on the sighting forms as described in the **Federal Register** notice of the issuance of the 2017–2018 IHA (82 FR 17209; April 10, 2017). At the conclusion of the in-water construction work, ADOT&PF will provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

**Determinations**

ADOT&PF proposes to conduct activities similar to those covered in the previous 2017–2018 IHA. As described above, the number of estimated takes of the same stocks of marine mammals is the same as those authorized in the 2017–2018 IHA that were found to meet the negligible impact and small numbers standards. Our analysis showed that less than 9.07 percent of the populations of affected stocks, with the exception of minke and killer whales, could be taken by harassment. For Northern resident and West Coast transient killer whales, the percentages, when instances of take are compared to abundance, are 48.2 percent and 51.8 percent, respectively. However, the takes estimated for these stocks (up to 126 instances assuming all takes are accrued to a single stock) are not likely to represent unique individuals. Instead, we anticipate that there will be multiple takes of a smaller number of individuals.

The Northern resident killer whale stock are most commonly seen in the waters around the northern end of Vancouver Island, and in sheltered inlets along B.C.'s Central and North Coasts. They also range northward into Southeast Alaska in the winter months. Pile driving operations are not permitted from December through February. It is unlikely that such a large portion of Northern resident killer whales with ranges of this magnitude would be concentrated in and around Icy Passage.

NMFS believes that small numbers of the West coast transient killer whale stock would be taken based on the limited region of exposure in comparison with the known distribution of the transient stock. The West coast transient stock ranges from Southeast Alaska to California, while the proposed project activity would be stationary. A notable percentage of West coast transient whales have never been observed in Southeast Alaska. Only 155 West coast transient killer whales have been identified as occurring in Southeast Alaska according to Dahlheim and White (2010). The same study identified three pods of transients, equivalent to 19 animals that remained almost exclusively in the southern part of Southeast Alaska (*i.e.* Clarence Strait and Sumner Strait). This information indicates that only a small subset of the entire West coast Transient stock would be at risk for take in the Icy Passage area because a sizable portion of the stock has either not been observed in Southeast Alaska or consistently remains far south of Icy Passage.

There is no current abundance estimate for minke whale since population data on this species is dated. However, the proposed take of 42 minke whales may be considered small. A visual survey for cetaceans was conducted in the central-eastern Bering Sea in July–August 1999, and in the southeastern Bering Sea in 2000. Results of the surveys in 1999 and 2000 provide provisional abundance estimates of 810 and 1,003 minke whales in the central-eastern and southeastern Bering Sea, respectively (Moore *et al.,* 2002). Additionally, line-transect surveys were conducted in shelf and nearshore waters in 2001–2003 from the Kenai Fjords in the Gulf of Alaska to the central Aleutian Islands. Minke whale abundance was estimated to be 1,233 for this area (Zerbini *et al.,* 2006). However, these estimates cannot be used as an estimate of the entire Alaska stock of minke whales because only a portion of the stock's range was surveyed. (Allen and Anglis 2012). Clearly, 42 authorized takes should be considered a small number, as it constitutes only 5.2 percent of the smallest abundance estimate generated during the surveys just described and each of these surveys represented only a portion of the minke whale range.

Note that the numbers of animals authorized to be taken for all species, with the exception of Northern resident and West coast transient killer whales, would be considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

The proposed 2018–2019 IHA includes mitigation, monitoring, and reporting requirements that are identical to those depicted in the 2017–2018 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) ADOT&PF's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

**Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

In order to comply with the ESA, NMFS Alaska Regional Office (AKR) Protected Resources Division issued a Biological Opinion on March 21, 2017 under section 7 of the ESA, on the issuance of an IHA to ADOT&PF under section 101(a)(5)(D) of the MMPA. This consultation concluded that the project was likely to adversely affect but unlikely to jeopardize the continued existence of the threatened Mexico DPS of humpback whale (*Megaptera novaeangliae*) or the endangered western DPS of Steller sea lion (*Eumatopias jubatus*), or adversely modify designated critical habitat for Steller sea lions. In a memo dated June 13, 2018, NMFS AKR concluded that re-initiation of section 7 consultation is not necessary for the issuance of the proposed 2018–2019 IHA. The only modification to the project is a time shift of one year. No additional take has been requested by ADOT&PF or is proposed for authorization by NMFS. All mitigation measures described in the Biological Opinion would be implemented to reduce harassment of marine mammals and document take of marine mammals. For these reasons, we anticipate no new or changed effects of the action beyond what was considered in the 2017 Biological Opinion.

**Proposed Authorization and Request for Public Comments**

As a result of these determinations, NMFS proposes to issue an IHA to ADOT&PF for the Gustavus Ferry Terminal Improvements project in Gustavus, AK from December 15, 2018 through December 14, 2019, provided the previously described mitigation, monitoring, and reporting requirements from the 2017–2018 IHA are incorporated. We request comment on our analyses and the proposed issuance of the IHA which would be identical to the previous IHA *(https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-dot-gustavus-ferry-terminal-improvement-project).* We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a second one-year IHA without additional notice when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA;
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: August 3, 2018.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2018–16993 Filed 8–8–18; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG376**

### Notice of Availability of a Request for Information: Expressions of Interest in Conducting Collaborative Research and Development on Innovative Approaches for Exploiting Environmental Data

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for information.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is seeking expression of interest from private firms interested in entering into a Cooperative Research and Development Agreement (CRADA) with NOAA to conduct collaborative research and development (R&D) on new and innovative approaches that could lead to new and better ways of processing, exploiting and disseminating space-based Earth and space weather observations from NOAA developed and deployed satellites, with a wide range of applications, societal and economic benefits.

**DATES:** Comments must be received by 5 p.m. on September 24, 2018. Any questions pertaining to this Request for Information must be submitted no later than August 24, 2018.

**ADDRESSES:** You may submit comments on this document by the following method:

*Email: Derek.parks@noaa.gov.* Please include the subject heading of ''Response to Collaborative R&D RFI''. Attachments to electronic comments will be accepted in Microsoft Word or Excel, or Adobe PDF formats only.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. Comments that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Derek Parks, Technology Transfer Program Manager, Technology Partnerships Office, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of

Oceanic and Atmospheric Research, Room 2617, 1305 East West Hwy, Bldg. SSMC4, Silver Spring, MD 20910–3278. (Phone: 301–628–1010, email: *derek.parks@noaa.gov*).

**SUPPLEMENTARY INFORMATION:** The National Oceanic and Atmospheric Administration (NOAA) is seeking expression of interest from private firms interested in entering into a Cooperative Research and Development Agreement (CRADA) with NOAA to conduct collaborative research and development (R&D) on new and innovative approaches that could lead to new and better ways of processing, exploiting and disseminating space-based Earth and space weather observations from NOAA developed and deployed satellites, with a wide range of applications, societal and economic benefits.

The initial period of performance for this CRADA is expected to be from fiscal year 2019 through fiscal year 2021 (three years), with extensions possible if all parties agree.

This notice does not constitute an Invitation for Bid or Request for Proposal and is not to be construed as a commitment by the Government. No contracts will be awarded as a result of this notice. No reimbursement will be made for any costs associated with providing information in response to this notice or for any follow-up requests for information. NOAA may contact respondents for clarification and discussion of the submitted responses.

**Synopsis**

NOAA wishes to conduct collaborative R&D with one or more private firms or non-government groups on new techniques to be used, new products to be generated, enhancement of the use of satellite data in existing or new applications, and exploring potential new services that will enhance the value and enable wider use of data obtained from NOAA's space-based assets. General areas of R&D interest include, but are not limited to, exploring creating new products and eliciting new information for geophysical applications benefiting citizens, communities, local, state and federal governments and the private sector, and the use of new numerical approaches such as machine learning and artificial intelligence (AI) to maximize the information gathered from satellite observations. Some potential R&D topics on specific uses of data could include: (1) Atmospheric composition for air quality, and visibility applications, (2) atmospheric data for measuring instability and therefore severe weather and turbulence applications, (3) ocean and coastal data for ecosystems, severe weather, inundation, and water quality management, (4) land data for multiple applications such as wildfires, agriculture, droughts, flooding, urban planning, *etc.,* (5) information delivery systems for extreme environmental conditions, (6) satellite-based data of volcanic ash for aviation safety and societal applications, (7) day-night band for new applications such as detection of fires, population migration, *etc.,* (8) satellite data for renewable energy availability, (9) space-based data for measuring economic vulnerability (to space weather, to drought, *etc.*), (10) compositing multiple geophysical data sets to generate user-ready decision-making products for different economic sectors (insurance, health, transportation, tourism, education, energy, agriculture, *etc.*), and (11) cloud information for better characterizing the state of the atmosphere in all sky situations for use as initial conditions in numerical model forecasts.

**Documentation of Interest**

Responders may document their interest in entering into a CRADA with a comment to Derek Parks, Technology Transfer Program Manager. See contact information above in **ADDRESSES**. Responders must include, in writing, detailed information regarding their technical qualifications, the company name, address, point of contact, telephone number, and business size. Information submitted should be pertinent and specific in the technical areas described above under consideration. Any other specific and pertinent information as pertains to this particular undertaking that would enhance the information submitted will be considered by the agency.

Additional information requested:

(A) Institution's name, address, point of contact, phone number and email address.

(B) If a business, include the firm's DUNS number and Cage Code as provided under the SAM system.

(C) If a business, then state the firm's SBA certified small business concern status or other socioeconomic status. Specifically identify if your firm is HUBZone-certified, Service Disabled Veteran Owned, Women Owned, or in the SBA's 8(a) program. If your institution is not a small business, please state that it is a large business, FFRDC, university, UARC, or other.

(D) Institution's previous work experience that is similar to that described above.

(E) Any other pertinent documentation or information.

(F) Responses should be no more than 10 pages.

All information submitted in response to this notice is voluntary; the United States Government will not pay for information requested nor will it compensate any respondent for any cost incurred in developing information provided to the United States Government. No hard copy submittals will be accepted or considered. All responses to this Request for Information shall be submitted only via email to *derek.parks@noaa.gov* (see **ADDRESSES**).

Dated: August 2, 2018.

**Sid Boukabara,**

*Senior Scientist for Strategic Initiatives, Center for Satellite Applications and Research, NOAA Satellite and Information Service.*

[FR Doc. 2018–17054 Filed 8–8–18; 8:45 am]

**BILLING CODE 3510–HR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Notice of Availability of a Programmatic Environmental Assessment and Finding of No Significant Impact for the National Oceanic and Atmospheric Administration National Data Buoy Center

**AGENCY:** National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of availability.

**DATES:** The PEA and Finding of No Significant Impact are available for public inspection for 30 days after posting.

**ADDRESSES:** The Final PEA can be accessed at:*http://www.ndbc.noaa.gov/pea/ndbc_final_pea_20180104.pdf.*

The Finding of No Significant Impact is available for public inspection for 30 days after posting. It can be found at:*http://www.ndbc.noaa.gov/pea/ndbc_fonsi_signed_20180102.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Joe Swaykos, National Data Buoy Center, Bldg. 3205, Stennis Space Center, MS 39529; phone (228) 688–4766; fax (228) 688–1364; email *joe.swaykos@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The National Oceanic and Atmospheric Administration (NOAA) National Data Buoy Center (NDBC), a part of the National Weather Service (NWS), designs, develops, operates, and maintains a network of moored buoys

and coastal stations throughout the world's oceans, seas, and lakes for the purpose of civil earth marine observations. NDBC has prepared a Programmatic Environmental Assessment (PEA) to analyze the continued operational activities of its network of moored buoys and coastal stations. The NDBC PEA has been created in accordance with the National Environmental Policy Act of 1969.

The expected outcome from a Programmatic Environmental Assessment is either (a) finding of no significant impact; (b) identification of the need for an environmental impact statement; or (c) the proposed action is covered by a categorical exclusion established by the parent agency. In the case of the NDBC PEA a finding of no significant impact was made.

Dated: August 3, 2018.

**Joseph A. Pica,**

*Director, Office of Observation, National Weather Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2018–17038 Filed 8–8–18; 8:45 am]

**BILLING CODE 3510–KE–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Pacific Island Pelagic Longline Fisheries; Short-tailed Albatross-Fisheries Interaction Recovery Reporting.

*OMB Control Number:* 0648–0456.

*Form Number(s):* None.

*Type of Request:* Regular (extension of a currently approved information collection).

*Number of Respondents:* 1.

*Average Hours per Response:* 1.

*Burden Hours:* 3.

*Needs and Uses:* This request is for extension of a currently approved information collection. Federal regulations require the operator of a vessel with a Hawaii longline limited access permit vessel to notify NMFS if an endangered short-tailed albatross is hooked or entangled during fishing operations. Following the retrieval of the albatross from the ocean the vessel operator must record the condition of the bird on a recovery data form. A veterinarian will use the information to provide advice to the captain for caring for the bird. If the albatross is dead, the captain must attach an identification tag to the carcass to assist the U.S. Fish and Wildlife Service (USFWS) biologists in subsequent studies. This collection of information is one of the terms and conditions contained in the Endangered Species Act Section 7 biological opinion issued by USFWS, and is intended to maximize the probability of the long-term survival of short-tailed albatrosses accidentally taken by longline gear.

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: August 6, 2018.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2018–17057 Filed 8–8–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Certification Requirements for Distributors of NOAA Electronic Navigational Charts/NOAA Hydrographic Products.

*OMB Control Number:* 0648–0508.

*Form Number(s):* None.

*Type of Request:* Regular (extension of a currently approved information collection).

*Number of Respondents:* 8.

*Average Hours per Response:* 1 hour to provide a distribution report twice a year, 12 hours for reporting of errors in the ENC (approximately 4 per month, usually each distributor will catch the same issue).

*Burden Hours:* 88.

*Needs and Uses:* This request is for extension of a currently approved information collection.

NOS Office of Coast Survey manages the Certification Requirements for Distributors of NOAA Electronic Navigational Charts (NOAA ENCs®). The certification allows entities to download, redistribute, repackage, or in some cases reformat, official NOAA ENCs and retain the NOAA ENC's official status. The regulations for implementing the Certification are at 15 CFR part 995. The recordkeeping and reporting requirements of 15 CFR part 995 form the basis for this collection of information. This information allows the Office of Coast Survey to administer the regulation, and to better understand the marketplace resulting in products to that meet the needs of the customer in a timely and efficient manner.

*Affected Public:* Not-for-profit institutions; business or other for-profits organizations.

*Frequency:* Semiannually and on occasion.

*Respondent's Obligation:* Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: August 6, 2018.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2018–17055 Filed 8–8–18; 8:45 am]

**BILLING CODE 3510–JE–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID: USAF–2018–HQ–0003]**

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** 30-Day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 10, 2018.

**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Web-based Legal Information Online System (WebLIONS); OMB Control Number 0701–XXXX.

*Type of Request:* New.

*Number of Respondents:* 191,000.

*Responses per Respondent:* 1.

*Annual Responses:* 191,000.

*Average Burden per Response:* 3 minutes.

*Annual Burden Hours:* 9,550.

*Needs and Uses:* Requesting authorization to collect information on individuals who seek assistance from the Air Force in resolving their personal legal issues. Air Force personnel use WebLIONS to create and maintain records on these individuals in order to perform their official duties and to manage the legal assistance program. The system allows personnel to review and track cases, as well as perform conflict checks. It is also consulted by attorneys and paralegals when they are generating legal documents for their clients.

*Affected Public:* Individual or Households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: August 6, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2018–17034 Filed 8–8–18; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

**[FE Docket No. 18–69–LNG]**

## BP Energy Company; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas on a Short-Term Basis

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on June 15, 2018, by BP Energy Company (BPEC), requesting blanket authorization to export liquefied natural gas (LNG) previously imported into the United States from foreign sources in an amount up to the equivalent of 30 billion cubic feet (Bcf) of natural gas on a short-term or spot market basis. BPEC requests this authorization for a two-year period commencing on July 15, 2018, or as soon thereafter as the requested authorization is granted. BPEC seeks authorization to export the LNG from the Dominion Energy Cove Point LNG, LP Terminal (Cove Point Terminal) located in Calvert County, Maryland, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. BPEC states that it is authorized in DOE/FE Order No. 4199 to import the equivalent of up to 1,200 Bcf of natural gas from various international sources by vessel for a two-year period beginning on August 22, 2018, and extending through August 21, 2020. BPEC further states that it does not seek authorization to export any domestically produced natural gas or LNG. BPEC is requesting this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Additional details can be found in BPEC's Application, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2018/07/f53/18-69-LNG.pdf.* Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, September 10, 2018.

**ADDRESSES:**

*Electronic Filing by email: fergas@hq.doe.gov.*

*Regular Mail:* U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

*Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.):* U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Beverly Howard or Larine Moore, U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9387; (202) 586–9478.

Cassandra Bernstein or R.J. Colwell, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy Forrestal Building, Room 6D–033, 1000 Independence Ave. SW, Washington, DC 20585, (202) 586–9793 or 586–8499.

**SUPPLEMENTARY INFORMATION:**

### DOE/FE Evaluation

The Application will be reviewed pursuant to section 3 of the NGA, 15 U.S.C. 717b. In reviewing this Application, DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this

proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 18–69–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 18–69–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation and International Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on August 1, 2018.

**Amy Sweeney,**

*Director, Division of Natural Gas Regulation, Office of Fossil Energy.*

[FR Doc. 2018–17046 Filed 8–8–18; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC18–119–000.
*Applicants:* NextEra Energy, Inc., 700 Universe, LLC, Southern Company—Florida LLC, Oleander Power Project, Limited Partnership.
*Description:* Errata to July 3, 2018 Joint Application for Authorization Under Section 203 of the Federal Power Act of NextEra Energy, Inc., et. al.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5046.
*Comments Due:* 5 p.m. ET 9/4/18.

*Docket Numbers:* EC18–131–000.
*Applicants:* Oleander Power Project, Limited Partnership, Power Holdings, LLC.
*Description:* Application Under Section 203 of the Federal Power Act of Oleander Power Project, et al.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5044.
*Comments Due:* 5 p.m. ET 8/24/18.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG18–118–000.
*Applicants:* Whalley Computer Associates, Inc.
*Description:* Self-Certification of EG or FC of Whalley Computer Associates, Inc.
*Filed Date:* 8/2/18.
*Accession Number:* 20180802–5109.
*Comments Due:* 5 p.m. ET 8/23/18.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER18–1222–003.
*Applicants:* PSEG Energy Resources & Trade LLC.
*Description:* Compliance filing: Informational Filing KEC Effective Date to be effective 7/4/2018.
*Filed Date:* 8/2/18.
*Accession Number:* 20180802–5018.
*Comments Due:* 5 p.m. ET 8/23/18.

*Docket Numbers:* ER18–2115–001.
*Applicants:* Wisconsin Public Service Corporation.
*Description:* Tariff Amendment: Amendment to Reactive Power Rate Filing to be effective 10/1/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5068.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2118–000; ER18–2003–000;ER18–2066–000; ER18–2067–000;ER18–1981–000; ER18–2032–000.
*Applicants:* Armadillo Flats Wind Project, LLC, Lorenzo Wind, LLC, Minco Wind IV, LLC, Minco Wind V, LLC, Pratt Wind, LLC, Wildcat Ranch Wind Project, LLC.
*Description:* Supplement to July 31, 2018 et al. Armadillo Flats Wind Project, LLC tariff filing, et al.
*Filed Date:* 8/1/18.
*Accession Number:* 20180801–5195.
*Comments Due:* 5 p.m. ET 8/22/18.

*Docket Numbers:* ER18–2142–000.
*Applicants:* Summer Solar LLC.
*Description:* § 205(d) Rate Filing: Shared Facilities Agreement to be effective 8/16/2018.
*Filed Date:* 8/2/18.
*Accession Number:* 20180802–5099.
*Comments Due:* 5 p.m. ET 8/23/18.

*Docket Numbers:* ER18–2143–000.
*Applicants:* Big Sky North, LLC.
*Description:* Baseline eTariff Filing: Shared Facilities Agreement to be effective 8/16/2018.
*Filed Date:* 8/2/18.
*Accession Number:* 20180802–5112.
*Comments Due:* 5 p.m. ET 8/23/18.

*Docket Numbers:* ER18–2145–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 1067R9 East Texas Electric Cooperative NITSA and NOA to be effective 1/1/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5043.

*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2146–000.
*Applicants:* E. I. du Pont de Nemours and Company.
*Description:* § 205(d) Rate Filing: Revisions to Market-Based Rate Tariff to be effective 10/3/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5067.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2147–000.
*Applicants:* Bayshore Solar C, LLC.
*Description:* § 205(d) Rate Filing: Bayshore Solar C, LLC Amended SFA to be effective 8/16/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5072.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2148–000.
*Applicants:* Bayshore Solar A, LLC.
*Description:* § 205(d) Rate Filing: Bayshore Solar A, LLC Amended SFA to be effective 8/16/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5074.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2149–000.
*Applicants:* Bayshore Solar B, LLC.
*Description:* § 205(d) Rate Filing: Bayshore Solar B, LLC Amended SFA to be effective 8/16/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5075.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2150–000.
*Applicants:* Antelope Big Sky Ranch LLC.
*Description:* § 205(d) Rate Filing: Antelope Big Sky Ranch LLC Amended SFA to be effective 8/16/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5081.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2151–000.
*Applicants:* Antelope DSR 1, LLC.
*Description:* § 205(d) Rate Filing: Antelope DSR 1, LLC Amended SFA to be effective 8/16/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5089.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2152–000.
*Applicants:* Antelope DSR 2, LLC.
*Description:* § 205(d) Rate Filing: Antelope DSR 2, LLC Amended SFA to be effective 8/16/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5093.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2153–000.
*Applicants:* Antelope DSR 3, LLC.
*Description:* § 205(d) Rate Filing: Antelope DSR 3, LLC Amended SFA to be effective 8/16/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5094.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2154–000.
*Applicants:* Elevation Solar C LLC.
*Description:* § 205(d) Rate Filing: Elevation Solar C LLC Amended SFA to be effective 8/16/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5095.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2155–000.
*Applicants:* Solverde 1, LLC.
*Description:* § 205(d) Rate Filing: Solverde 1, LLC Amended SFA to be effective 8/16/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5096.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2156–000.
*Applicants:* Western Antelope Blue Sky Ranch B LLC.
*Description:* § 205(d) Rate Filing: Western Antelope Blue Sky Ranch B LLC Amended SFA to be effective 8/16/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5097.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2157–000.
*Applicants:* Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: MAIT submits ECSAs, SA Nos. 4969, 4970, 4973, 4974 to be effective 10/5/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5098.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2158–000.
*Applicants:* Stillwater Wind, LLC.
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 8/6/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5112.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2159–000.
*Applicants:* Crazy Mountain Wind LLC.
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 8/6/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5113.
*Comments Due:* 5 p.m. ET 8/24/18.

*Docket Numbers:* ER18–2160–000.
*Applicants:* Wisconsin Power and Light Company.
*Description:* § 205(d) Rate Filing: Concurrence to WEPCo and WPL Balancing Area Operations Coordination Agreement to be effective 10/2/2018.
*Filed Date:* 8/3/18.
*Accession Number:* 20180803–5118.
*Comments Due:* 5 p.m. ET 8/24/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 3, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–17030 Filed 8–8–18; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER18–2140–000]**

### Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Persimmon Creek Wind Farm 1, LLC

This is a supplemental notice in the above-referenced proceeding of Persimmon Creek Wind Farm 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 23, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://*

*www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 3, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–17028 Filed 8–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[P–2423–029]**

### Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests: Great Lakes Hydro America

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for a temporary variance from elevation requirements.

b. *Project No.:* 2423–029.

c. *Date Filed:* July 10, 2018.

d. *Applicant:* Great Lakes Hydro America, LLC.

e. *Name of Project:* Riverside Hydroelectric Project.

f. *Location:* The project is located on Androscoggin River in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Kelly Maloney, Great Lakes Hydro America, LLC, 150 Main Street, Lewiston, ME 04240, (207) 755–5605.

i. *FERC Contact:* Anumzziatta Purchiaroni, (202) 502–6191, *anumzziatta.purchiaroni@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 20, 2018.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2423–029.

k. *Description of Request:* The licensee requests Commission approval for a temporary modification from the normal reservoir elevation to perform flashboards repairs at the project that were damaged and washed out since April 2018. Since that time, the licensee has been operating the project at dam crest elevation of 1,074.4 feet United States Geologic Datum (USGS), depending on flow spilling over the crest of the dam. The licensee plans to return the reservoir to the normal headwater level of 1,076.8 feet NGVD, at the end of September 2018, right after the flashboard repair work is completed. The licensee states that minimum flows for the bypassed reach will continue to be passed through leakage and the designated pipes within the spillway.

l. *Locations of the Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document (*i.e.,* P–2423–029). You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, MOTION TO INTERVENE, or PROTEST as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: August 3, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–17027 Filed 8–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP18–508–000]**

### Notice of Intent To Prepare an Environmental Assessment for the Proposed Columbia Gas Transmission, LLC Line Ka1 North Launcher/Receiver Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Line KA1 North Launcher/Receiver Project involving construction and operation of facilities by Columbia Gas Transmission, LLC (Columbia) in Fayette and Madison Counties, Kentucky. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on September 4, 2018.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider and address all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on June 20, 2018, you will need to file those comments in Docket No. CP18–508–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Columbia provided landowners with a fact sheet prepared by the FERC entitled An Interstate Natural Gas Facility On My Land? What Do I Need To Know? This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*).

#### Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* You will be asked to select the type of filing you are making; a comment on a particular project is considered a Comment on a Filing; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–508–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

#### Summary of the Proposed Project

The Line KA1 North Launcher/Receiver Project involves the installation of two 16-inch × 12-inch bi-directional pig [1] launcher/receivers on Columbia's existing Line KA1 North pipeline and other modifications at seven discrete points along the pipeline within Fayette and Madison Counties, Kentucky. According to Columbia, these modifications are necessary to enable the use of smart pigs and cleaning pigs within the Line KA1 North pipeline, which would protect the pipeline from corrosion and provide advanced monitoring capabilities to maintain the pipeline's integrity between Columbia's existing Bybee and Muth Measurement and Regulation Stations.

The general location of the project facilities is shown in appendix 1.[2]

#### Land Requirements for Construction

Construction of the proposed facilities would disturb about 8.75 acres of land. Following construction, Columbia would maintain about 3.28 acres for permanent operation of the project's facilities. Approximately 0.02 acre of temporary access road, 3.42 acres of staging area, and 2.03 acres of temporary workspace would be allowed to revert to preconstruction conditions.

#### The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;

[1] A pig is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staff's independent analysis of the issues. The EA will be available in the public record through eLibrary.[3] Depending on the comments received during the scoping process, the Commission may also publish and distribute the EA to the public for an allotted comment period. Commission staff will consider and address all comments on the EA before making recommendations to the Commission. To ensure Commission staff has the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that information related to this environmental review is sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission publishes and distributes the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of a CD version or would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* CP18–508). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 3, 2018.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2018–17029 Filed 8–8–18; 8:45 am]

**BILLING CODE 6717–01–P**

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2017–0751; FRL–9981–15]**

## Interim Registration Review Decisions for Several Pesticides; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's interim registration review decisions for the chemicals listed in the Table in Unit IV of this Notice.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT:** *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

*For general information on the registration review program, contact:* Dana Friedman, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–8827; email address: *friedman.dana@epa.gov.*

### II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed interim decisions for all pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

### III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among

other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

## IV. What action is the agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's interim registration review decisions for the pesticides shown in the following table. The interim registration review decisions are supported by rationales included in the docket established for each chemical.

TABLE—REGISTRATION REVIEW INTERIM DECISIONS BEING ISSUED

| Registration review case name and No. | Docket ID No. | Chemical review manager and contact information |
|---|---|---|
| Boric Acid/Sodium Salts, Case 0024 | EPA–HQ–OPP–2009–0306 | Moana Appleyard, *appleyard.moana@epa.gov*, (703) 308–8175. |
| Potato Coleopteran, Case 6503 | EPA–HQ–OPP–2016–0200 | Alan Reynolds, *reynolds.alan@epa.gov*, (703) 605–0515. |
| Cloransulam-methyl, Case 7243 | EPA–HQ–OPP–2010–0855 | Patricia Biggio, *biggio.patricia@epa.gov*, (703) 347–0547. |
| Cymoxanil, Case 7023 | EPA–HQ–OPP–2012–0148 | Veronica Dutch, *dutch.veronica@epa.gov*, (703) 308–8585. |
| Kresoxim-methyl, Case 7026 | EPA–HQ–OPP–2012–0861 | Bilin Basu, *basu.bilin@epa.gov*, (703) 347–0455. |
| Quinoxyfen, Case 7037 | EPA–HQ–OPP–2013–0771 | Katherine St. Clair, *stclair.katherine@epa.gov*, (703) 347–8778. |
| Sucrose, Case 5117 | EPA–HQ–OPP–2013–0751 | Cody Kendrick, *kendrick.cody@epa.gov*, (703) 347–0468. |

The proposed interim registration review decisions for the chemicals in the table above were posted to the docket and the public was invited to submit any comments or new information relevant to the proposals. EPA has addressed the comments or information received during the 60-day comment period for the proposed interim decisions for each pesticide listed in the Table. Comments from the 60-day comment period that were received may or may not have affected the Agency's interim decision. Pursuant to 40 CFR 155.58(c), the registration review case docket for the chemicals listed in the Table will remain open until all actions required in the interim decision have been completed.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-/reevaluation.*

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: July 26, 2018.

**Yu-Ting Guilaran,**

*Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2018–17083 Filed 8–8–18; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2017–0720; FRL–9981–14]**

## Registration Review; Draft Human Health and/or Ecological Risk Assessments for Several Pesticides; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's draft human health and ecological risk assessments for the registration reviews of dithiopyr, fluthiacet-methyl, hydramethylnon (pyrimidinone), and trifluralin.

**DATES:** Comments must be received on or before October 9, 2018.

**ADDRESSES:** Submit your comments, to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** *For pesticide specific information contact:* The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

*For general questions on the registration review program, contact:* Dana Friedman, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–8827; email address: *friedman.dana@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

### *B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all pesticides listed in the Table in Unit IV. After reviewing comments received during the public comment period, EPA may issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

## III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

## IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's human health and ecological risk assessments for the pesticides shown in the following Table, and opens a 60-day public comment period on the risk assessments.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

| Registration review case name and number | Docket ID number | Chemical review manager and contact information |
|---|---|---|
| Dithiopyr, Case 7225 | EPA–HQ–OPP–2013–0750 | Veronica Dutch, *dutch.veronica@epa.gov*, (703) 308–8585. |
| Fluthiacet-methyl, Case 7280 | EPA–HQ–OPP–2013–0285 | Caitlin Newcamp, *newcamp.caitlin@epa.gov*, (703) 347–0325. |
| Hydramethylnon, Case 2585 | EPA–HQ–OPP–2012–0869 | Christian Bongard, *bongard.christian@epa.gov*, (703) 347–0337. |
| Trifluralin, Case 0179 | EPA–HQ–OPP–2012–0417 | Patricia Biggio, *biggio.patricia@epa.gov*, (703) 347–0547. |

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the pesticides listed in the Table in Unit IV. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA may then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments.

*Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: July 24, 2018.

**Yu-Ting Guilaran,**

*Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2018–17082 Filed 8–8–18; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK

**[Public Notice: 2018–1430]**

### Agency Information Collection Activities: Comment Request

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Submission for OMB review and comments request.

**SUMMARY:** The Export-Import Bank of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

*The Multi-Buyer Policy:* Reasonable Spread of Risk (RSOR) Exclusions Worksheet will be used by external customers, current policyholders and portfolio managers to determine eligibility of Export-Import Bank support under the RSOR Policy. Program changes that were made in 2017 have resulted in revitalized demand of the RSOR product in the marketplace. This form will be available on EXIM's website and will standardize the collection of required information into a user friendly format that can be submitted electronically via email or as an attachment to an EXIM Online application. This form will be available on EXIM's website and will standardize the collection of required information into a user friendly format that can be submitted electronically via email or as an attachment to an EXIM Online application.

**DATES:** Comments must be received on or before September 10, 2018 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 18–01) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: EXIM form (EIB 18–01). The information collection tool can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib18-01.pdf.*

**SUPPLEMENTARY INFORMATION:**

*Title and Form Number:* EIB18–01 Multi-Buyer Policy: Reasonable Spread of Risk (RSOR) Exclusions Worksheet.

*Number:* XXXX–XXXX.

*Type of Review:* New.

*Need and Use:* The Multi-Buyer Policy: Reasonable Spread of Risk (RSOR) Exclusions Worksheet will be used by external customers, current policyholders and portfolio managers to determine eligibility of Export-Import Bank support under the Reasonable Spread of Risk Policy.

*Affected Public:* This form affects entities involved in the export of U.S. goods and services.

*Annual Number of Respondents:* 60.

*Estimated Time per Respondent:* 15 minutes.

*Annual Burden Hours:* 15 hours.

*Frequency of Reporting or Use:* As needed.

*Government Expenses:*

*Reviewing Time per Year:* 60 hours.

*Average Wages per Hour:* $42.50.

*Average Cost per Year:* $2,550 (time * wages).

*Benefits and Overhead:* 20%.

*Total Government Cost:* $3,060.

**Bassam Doughman,**

*IT Specialist.*

[FR Doc. 2018–17040 Filed 8–8–18; 8:45 am]

BILLING CODE 6690–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2018.

*A. Federal Reserve Bank of Atlanta* (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *CapStar Financial Holdings, Inc., Nashville, Tennessee*; to merge with Athens Bancshares Corporation, and thereby directly acquire Athens Federal Community Bank, National Association, both of Athens, Tennessee.

Board of Governors of the Federal Reserve System, August 6, 2018.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2018–17093 Filed 8–8–18; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 27, 2018.

*A. Federal Reserve Bank of Minneapolis* (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Patricia Fishback, Brookings, South Dakota, individually and as trustee of the Robert E. Fishback GRAT A Trust, Brookings, South Dakota;* to retain voting shares of Fishback Financial Corporation, Brookings, South Dakota (FFC BHC) and thereby indirectly retain shares of First Bank & Trust, Brookings, South Dakota (FBT Brookings) and First Bank & Trust, Sioux Falls, South Dakota (FBT Sioux Falls). In addition, Mary Beth Fishback, Brookings, South Dakota and eighteen (18) trusts (with Mary Beth Fishback; Robert Fishback, Thomas Fishback, and Van Fishback, all of Brookings, South Dakota; and Ann Rivlin of Madison, Wisconsin each as trustee of one or more of these trusts), for retroactive approval to join the Fishback family shareholder group.

*B. Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President), 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Kevin Page, Trustee of the Kevin Page Trust, Fort Worth, Texas, Dana Page, Co-Trustee of the Dana Page Trust, Austin, Texas, Meghan Anderson Smith, Co-Trustee of the Meghan Anderson Smith Trust, Fremont, Nebraska, Whitney Anderson, Co-Trustee of the Whitney Anderson Trust, Coppell, Texas, Eric Jones, Trustee of the Eric Jones Trust, Blue Lake, California, and Christopher Marious Jones, Co-Trustee of the Christopher Marious Jones Trust, Los Angeles, California;* to retain shares of Page Bancshares, Inc., Liberty, Missouri, and thereby retain shares of Pony Express Bank, Braymer, Missouri.

Board of Governors of the Federal Reserve System, August 6, 2018.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2018–17094 Filed 8–8–18; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 2018.

*A. Federal Reserve Bank of New York* (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *Standard Chartered Bank, London, England;* through its subsidiary, Standard Chartered Holdings, Inc., New York, New York, to engage through a newly formed entity, The Consortium, LLC, in data processing activities, pursuant to section 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 2018.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2018–17010 Filed 8–8–18; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Docket Number: NIOSH 278]**

### Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH)

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH). This meeting is open to the public, limited only by the space available. The meeting room accommodates approximately 33 people. The meeting is also open to the public via webcast. If you wish to attend in person or by webcast, please see the NIOSH website to register (*http://www.cdc.gov/niosh/bsc/*) or call (404–498–2539) at least five business days in advance of the meeting. Teleconference is available toll-free; please dial (888) 397–9578, Participant Pass Code 63257516. Adobe Connect webcast will be available at *https://odniosh.adobeconnect.com/nioshbsc/* for participants wanting to connect remotely. This meeting is open to the public, limited only by the space available. The public is welcome to participate during the public comment period, 12:30 p.m. to 12:45 p.m., EDT, September 27, 2018. Please note that the public comment period ends at the time indicated above. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first come-first served basis. Written comments will also be accepted from those unable to attend the public session via an on-line form at the following website: *http://www.cdc.gov/niosh/bsc/contact.html.*

**DATES:** The meeting will be held on September 27, 2018, 8:30 a.m.–2:30 p.m., EDT.

**ADDRESSES:** Patriots Plaza I, 395 E Street SW, Room 9000, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Alberto Garcia, M.S., Executive Secretary, BSC, NIOSH, CDC, 1090 Tusculum Avenue, MS–R5, Cincinnati, OH 45226, telephone (513) 841–4596, fax (513) 841–4506, email: *agarcia1@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose:* The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors provides guidance to the Director, National Institute for Occupational Safety and Health on research and prevention programs. Specifically, the Board provides guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board evaluates the degree to which the activities of the National Institute for Occupational Safety and Health: (1) Conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

*Matters to be Considered:* The agenda for the meeting addresses occupational safety and health issues related to: NIOSH confronts the Opioid Crisis; 21st Century Surveillance Report; and Enhancing the Transparency of NIOSH Science. An agenda is also posted on the NIOSH website (*http://www.cdc.gov/niosh/bsc/*). Members of the public who wish to address the NIOSH BSC are requested to contact the Executive Secretary for scheduling purposes (see contact information below). Alternatively, written comments to the BSC may be submitted via an on-line form at the following website: *http://www.cdc.gov/niosh/bsc/contact.html.* Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of

meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Sherri A. Berger,**

*Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2018–17042 Filed 8–8–18; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Name of Committee:* Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

*Dates:* October 16–October 18, 2018.

*Time:* 8:00 a.m.–5:00 p.m., EDT.

*Place:* Embassy Suites, 1900 Diagonal Road, Alexandria, VA 22314.

*Agenda:* The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

*For Further Information Contact:* Nina Turner, Ph.D., Scientific Review Officer, NIOSH, 1095 Willowdale Road, Morgantown, WV 26506, (304) 285–5976; *nturner@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Sherri Berger,**

*Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2018–17043 Filed 8–8–18; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2017–N–0558]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Disclosures in Professional and Consumer Prescription Drug Promotion

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Fax written comments on the collection of information by September 10, 2018.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title ''Disclosures in Professional and Consumer Prescription Drug Promotion.'' Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Disclosures in Professional and Consumer Prescription Drug Promotion

*OMB Control Number 0910–NEW*

### I. Background

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

FDA regulates prescription drug advertising and promotional labeling directed to healthcare professionals (HCPs) and consumers (section 502(a) and (n), respectively, of the FD&C Act (21 U.S.C. 352(a) and (n))). In the course of promoting their products, pharmaceutical sponsors (sponsors) may present a variety of information including the indication, details about the administration of the product, efficacy information, and clinical trial data. To present often complicated information concisely, sponsors may not include relevant information in the body of the text or visual display of the claim. Additionally, sponsors may not always present limitations to the claim in the main body of the text or display. In these cases, sponsors typically include disclosures of information somewhere in the promotional piece.

There is limited published research on disclosures in prescription drug promotion, either directed to consumers or to HCPs. The use of disclosures is one method of communicating information to HCPs and consumers about scientific and clinical data, the limitations of that data, and practical utility of that information. These disclosures may influence HCP and consumer comprehension and decision making, and may affect how and what treatment HCPs prescribe for their patients. Previous research on the effectiveness of disclosures has been conducted primarily in the dietary supplement arena (Refs. 1–4). Thus, the proposed research will examine the effectiveness of clear and conspicuous disclosures in prescription drug promotion directed to both populations. The purpose of our study is to determine how useful disclosures regarding prescription drug information are when presented prominently and adjacent to claims.[1] Specifically, are HCPs and consumers able to use disclosures to effectively frame information in efficacy claims in prescription drug promotion?

To address this research question, we have designed a set of studies that cover both consumers and HCPs, as well as three presentations addressing different

[1] The Federal Trade Commission (FTC), which regulates the advertising of non-prescription drug products as well as other non-FDA regulated products (*e.g.,* package goods, cars, etc.) issued a specific position on disclosures (Ref. 5) for the advertising it regulates. Specifically, FTC explains that disclosures must be ''clear and conspicuous''; in other words, in understandable language, located near the claim to be further clarified, and not hidden or minimized by small font or other distractions.

types of information: Scope of treatment, ease of use, and statistical significance (see table 1). The scope of treatment information to be tested can be thought of as disease-awareness information; that is, a broader discussion of a medical condition that includes disease characteristics beyond what the promoted drug has been shown to treat. The disclosure for this condition will focus on the disease characteristics that the product has been shown to treat. The ease of use information to be tested is a simple claim of easy drug administration, followed by a disclosure that includes material information about drug administration. Finally, the statistical significance information to be tested includes a presentation of efficacy analyses, followed by a disclosure revealing that the results of the presented analyses were not statistically significant, and thus must be viewed with considerable caution. We selected these types of information because they are commonly seen in promotional material.

Each participant will view three different professionally developed mock promotional print pieces for different prescription drug products that mimic currently available promotion. For each of the three promotional pieces, they will be randomized to see an ad with a weak disclosure, a strong disclosure, or no disclosure. We will manipulate the strength of disclosure by including additional concluding information (strong) or not (weak) in the disclosure statement. In all cases, disclosures will be adjacent to claims and written in font clear enough to be detected.

TABLE 12—IDENTICAL STUDY DESIGNS FOR SAMPLES OF HCPS AND CONSUMERS

| Type of claim | Level of disclosure | | Control |
|---|---|---|---|
| | Weak | Strong | |
| **Study A: HCPs** | | | |
| Scope of Treatment | Evidence Only | Evidence + Conclusion | No Disclosure |
| Ease of Use | Evidence Only | Evidence + Conclusion | No Disclosure |
| Statistical Significance | Evidence Only | Evidence + Conclusion | No Disclosure |
| **Study B: Consumers** | | | |
| Scope of Treatment | Evidence Only | Evidence + Conclusion | No Disclosure |
| Ease of Use | Evidence Only | Evidence + Conclusion | No Disclosure |
| Statistical Significance | Evidence Only | Evidence + Conclusion | No Disclosure |

We will analyze the results of the scope of treatment disclosures, the ease of use disclosures, and the statistical significance disclosures independently of each other, even though each participant will see one of each. The claims and disclosures are different enough that practice effects should be moderated, but we will counterbalance the order of ads shown to minimize potential bias.

Because promotional pieces intended for HCPs and consumers have different levels of complexity and medical depth, and because the amount of knowledge expected between the two groups differs, the studies will use separate mock promotional pieces and ask slightly different comprehension questions of each group. We will maintain as much similarity across groups as possible for descriptive comparisons.

Both consumers and HCPs will be recruited from internet panels. Because promotional pieces will represent three different medical conditions, we will obtain a general population sample of consumers and a HCP sample of primary care physicians. We will exclude individuals who are employees of the U.S. Department of Health and Human Services or who work in pharmaceutical, advertising, or marketing settings because their knowledge and experiences may not reflect those of the typical healthcare provider or consumer. Eligible participants who agree to participate voluntarily in this survey will view mock promotional pieces and answer questions about their comprehension of the main messages in the promotion, perceptions of the product, attention to disclosures and intention to ask a HCP about it (consumers) or to prescribe the product (HCPs). Questionnaires are available upon request.

Pretests will be conducted before conducting the main studies to ensure the mock promotional pieces are realistic and that the questionnaire flows well and questions are reasonable. We will supplement the findings of the pretests with two small eye-tracking studies. Researchers use eye-tracking technology to capture viewing behavior that is independent of self-report. The technology measures where and for how long participants glanced at or examined particular parts of a display. It has been used in studies of consumer print advertising (Refs. 6–8) and internet promotion (Refs. 9 and 10). To our knowledge, there is little or no published research using eye-tracking technology with HCPs.

We will use these small eye-tracking studies to determine what parts of each promotional piece consumers and HCPs actually viewed. Specifically, we will be able to determine whether they looked at the disclosure statement at all, and we can obtain a rough idea of how long they looked at it. This data will complement the self-reported items on the questionnaire. Moreover, we will use this data, as well as the pretest data, to improve the main studies. For this part of the study, 20 consumers and 20 HCPs will view the promotional pieces.

In the **Federal Register** of June 14, 2017 (82 FR 27268), FDA published a 60-day notice requesting public comment on the proposed collection of information. Four comments were received. Responses to those comments follow. For brevity, some public comments are paraphrased and therefore may not reflect the exact language used by the commenter. We assure commenters that the entirety of their comments was considered even if not fully captured by our paraphrasing in this document. The following acronyms are used here: DTC = direct-to-consumer; HCP = healthcare professional; FDA and ''The Agency'' = Food and Drug Administration; OPDP = FDA's Office of Prescription Drug Promotion.

The first public comment responder (*regulations.gov tracking number lkl-8y39-rtyb*) included 25 individual

comments, to which we have responded.

*Comment 1a (summarized):* FDA is conducting too much research without articulating a clear, overarching research agenda or adequate rationales on how the proposed research related to the goal of further protecting public health. The Agency should publish a comprehensive list of its prescription drug advertising and promotion studies from the past 5 years and articulate a clear vision for its research priorities for the near future.

*Response 1a:* OPDP's mission is to protect the public health by helping to ensure that prescription drug information is truthful, balanced, and accurately communicated, so that patients and healthcare providers can make informed decisions about treatment options. OPDP's research program supports this mission by generating scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that we believe are most central to our mission, focusing in particular on three main topic areas: Advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features we assess how elements such as graphics, format, and disease and product characteristics impact the communication and understanding of prescription drug risks and benefits; focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience; and our focus on research quality aims at maximizing the quality of research data through analytical methodology development and investigation of sampling and response issues.

Because we recognize the strength of data and the confidence in the robust nature of the findings is improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage, which can be found at: *https://www.fda.gov/aboutfda/centersoffices/officeofmedicalproductsandtobacco/cder/ucm090276.htm.* The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office. The website maintains information on studies we have conducted, dating back to a survey of DTC attitudes and behaviors conducted in 1999.

*Comment 1b (The commenter provided a summary of the comments followed by a more detailed description of the same comments. For brevity, the summary of comments has been omitted and only the specific comments [1b through 1y] are provided below. The commenter's full comments may be accessed at regulations.gov via tracking number lkl-8y39-rtb) (verbatim):* It is not clear from this description whether the study will yield useful information to evaluate whether disclosures provide appropriate contextual information in certain communications, whether such disclosures can be made more effective, and where the disclosures are necessary to ensure communications are truthful and non-misleading. The Agency should provide significantly more detail regarding the design of the study, the proposed disclosures, the mock promotional pieces, and the information it seeks to collect.

*Response 1b:* We have provided the purpose of the study, the design, the population of interest, and have provided the questionnaire to numerous individuals upon request. These materials have proven sufficient for others to comment publicly, and for academic experts to peer-review the study successfully. We do not make draft stimuli public during this time because of concerns that this may contaminate our participant pool and compromise the research.

*Comment 1c (summarized):* After pretesting, the Agency should make available revised questionnaires, data collection methodologies, and stimuli.

*Response 1c:* In this current notice, we provide the revised design as based on academic peer reviewers, cognitive interviewing, and public comments. The revised questionnaire is also available upon request. Our full stimuli are under development during the PRA process. We do not make draft stimuli public during this time because of concerns that this may contaminate our participant pool and compromise the research. Individuals are welcome to inquire about the progress of the study and any changes from the pretests will be communicated at that time.

*Comment 1d (summarized):* FDA should base mock promotional stimuli on realistic promotional pieces.

*Response 1d:* We have done this. Our stimuli are modified from actual promotional pieces in the marketplace to disguise the original product.

*Comment 1e (summarized):* It is unclear whether such disclosures will contain relevant information ordinarily provided in promotional materials.

*Response 1e:* The goal of our research is to obtain answers to questions about prescription drug promotion that will inform the Agency and stakeholders. Thus, we strive in all of our studies to make our mock promotional pieces as realistic as possible. That includes any disclosures that we may include in testing. Also, please see response to comment 1d.

*Comment 1f (verbatim):* FDA seems to have an overly broad conception of the need for disclosures for ''scope of treatment'' communications. In the Notice, FDA describes this type of communication as ''a disease-awareness claim; that is, a broader discussion of a medical condition that may include disease characteristics beyond what the promoted drug has been shown to treat.'' Where a disease awareness communication discusses a disease in a manner beyond what the promoted drug has been shown to treat, but does so in a balanced manner without implying any particular treatment benefits from the associated drug, it should be viewed as providing helpful general background information on the disease, and not as making an off-label claim for the drug. In those circumstances, there should be no need for any disclosure about the limits of use of the drug. FDA should clarify its understanding of ''scope of treatment'' claims and make its proposed claims and disclosures available for public comment.

*Response 1f:* Previous research has demonstrated that presenting study participants with information about the consequences of a disease, particularly when the information was integrated into one print ad with information about a particular drug, resulted in false beliefs that the advertised drug prevented those consequences.[2] The ''scope of treatment'' claims that are included in this research are embedded in mock promotional materials, juxtaposed with specific efficacy information about the mock drug products. As such, they will likely imply ''particular treatment benefits from the associated drug.'' This research will help us to evaluate the usefulness of a disclosure in relation to this type of information when it is found in promotional pieces. Also, please see response to comment 1c.

[2] Aikin, K.J., H.W. Sullivan, and K.R. Betts, (2016). ''Disease information in direct-to-consumer prescription drug print ads.'' *Journal of Health Communication,* 21(2), pp. 228–239.

*Comment 1g (verbatim):* FDA states that the ''ease of use'' claim ''is a simple claim of easy drug administration that omits specific important details that contribute to a more difficult drug administration than suggested.'' This statement appears to imply that all ease of use claims are misleading, where the Agency perhaps intends to clarify that validated and non-misleading ''ease of use'' claims may require a disclosure or more context. FDA should clarify its understanding of ''ease of use'' claims, and, in testing, ensure it does not test overly misleading base claims for ''ease of use'' that would be difficult to contextualize with a disclosure statement and hence would bias the results of its study. Such claims should be made available for public comment.

*Response 1g:* FDA did not intend to imply that all ease of use claims are misleading or that all ease of use claims would necessarily require a disclosure. FDA agrees that some ease of use statements require a disclosure or more context and intends to evaluate one such example with this research. We have revised the description of the study in this notice to clarify. Also, please see response to comment 1c.

*Comment 1h (verbatim):* FDA states that the ''statistical significance'' claim ''will be one in which the disclosure reveals that the presented analyses were not statistically significant, and thus must be viewed with considerable caution.'' It is not clear what content FDA intends to test for this type of claim. We encourage FDA to clarify how it intends to present ''not statistically significant'' analyses for testing in order to ensure such claims are presented with appropriate contextual information. Such claims should be made available for public comment.

*Response 1h:* Please see responses to comment 1c, 1d, and 1e.

*Comment 1i (summarized):* The Agency should clarify what distinctions will be made between HCP and consumer pieces.

*Response 1i:* As our mock promotional pieces have been adapted from existing materials in the public domain, the materials directed to HCPs and to consumers vary in similar ways to what can currently be seen in the public domain. For example, materials directed to HCPs tend to have more data, more technical medical language, and more text in general. Consumer pieces are generally written in plainer language and generally do not include as much data and statistical information. Our pieces are highly realistic as they were developed from actual promotional pieces.

*Comment 1j (verbatim):* The Agency proposes that consumer and HCP subjects will be recruited from internet panels, indicating that the study will be conducted using an electronic format. Because the proposed research topic is not dependent on an electronic medium, FDA should consider testing non-electronic media as well, including printed promotional pieces.

*Response 1j:* Although our study will be conducted via the internet, we will show participants mock print materials in .pdf format.

*Comment 1k (verbatim):* The Agency proposes to use eye-tracking studies to complement the self-reported items on the questionnaire and to improve the main studies. [The commenter] encourages the Agency to use this technology in conjunction with other inputs (for example, qualitative research) to understand why subjects are looking at a portion of the proposed materials, rather than to draw conclusions that such portions were viewed. Additionally, an explanation of the use of eye-tracking technology should also be included during the subject enrollment process.

*Response 1k:* FDA plans to collect and analyze eye-tracking (physical measures of attention) data in conjunction with other measures, including cognitive interviews. To avoid the potential for priming effects, the eye-tracking component of the study will not be explained to recruited individuals before they report for their in-person sessions. However, participants will be made aware of the eye-tracking component during the informed consent process.

*Comment 1l (summarized):* The commenter recommends increasing the sample size of the eye-tracking components to ensure more robust data.

*Response 1l:* Our primary method of analysis of the eye-tracking data will be examination of gaze plots coupled with self-report data provided by participants. Thus, eye-tracking results will be examined on an individual, rather than aggregate, level. Furthermore, the eye-tracking studies included in this research are intended as qualitative, formative studies; they will be used to inform any necessary changes to the stimuli before the main studies. Formative eye-tracking studies such as these are often executed with sample sizes as small as five participants.[3] In our experience, a sample of 20 participants in each population ensures that we will collect fully useable data from a minimum of 15 participants in each population. Used as an observation tool, eye-tracking complements the other data collected to increase discoverability of specific events and confidence in our qualitative findings.

*Comment 1m (summarized):* The commenter recommends limiting the participant sample to disease sufferers rather than a general population sample.

*Response 1m:* We carefully consider the type of sample to use in each of our studies. In the current study, the population of sufferers for the conditions addressed by our stimuli (*i.e.,* chronic obstructive pulmonary disease (COPD), chronic iron overload, and high blood pressure) are varied. Because we are showing participants more than one ad, we chose not to select diagnosed populations or specialists.

*Comment 1n (summarized):* FDA should recruit a demographically and geographically diverse sample.

*Response 1n:* We agree and we plan to recruit individuals with a range of gender, race, ethnicity, and, as much as possible within an internet sample, socioeconomic status. For the consumer sample, we aim for a sample with 60 percent of people who have some college or less. An advantage of sampling via internet panel is that we have access to individuals in all parts of the United States.

*Comment 1o (verbatim):* FDA should capture whether subjects comprehend certain information disclosed in the mock promotional pieces, even if the subject does not recall information on the specifics. Currently, open-ended and recall questions (*e.g.,* Consumer Questionnaire Q2–Q3; HCP Questionnaire Q2–Q3) ask test subjects to identify certain information regarding the featured drug products (what a mock drug product is specifically ''used for'' or ''not approved for''). It is not clear why such an open-ended format or questions are necessary for the research purpose of the study, as subjects could recognize a limit to the efficacy being presented even if they do not follow or recall all of the details of a disclosure.

*Response 1o:* We do intend to capture what information has been observed in the mock promotional pieces, and we do this through the open-ended and recall questions. It is common practice to include open-ended and closed-ended questions in one research study, as they tend to complement each other. Open-ended questions allow responses that have not been prompted by particulars, which is not the case with closed-ended questions. Closed-ended questions

[3] Pernice, K. and J. Nielsen, (2009). ''How to Conduct Eyetracking Studies.'' *https://media.nngroup.com/media/reports/free/How_to_Conduct_Eyetracking_Studies.pdf.*

provide a more efficient way of obtaining information.

*Comment 1p (summarized):* FDA should ensure that terms used in the consumer pieces are consumer-friendly.

*Response 1p:* We agree and always review our mock consumer pieces for lay language. The terms mentioned by the commenter (*e.g.,* chronic iron overload, COPD, lung function, scientific evidence, effectiveness, statistically significant) will be used in the HCP materials. However, we also strive to make our materials as realistic as possible, and in this case, we have modified existing DTC pieces for consumers. If they used a term (*e.g.,* COPD), and OPDP reviewers agreed that this is common and acceptable, we maintained it in our mock pieces.

*Comment 1q (summarized):* FDA should consider changing the sliding scale format of Q4.

*Response 1q:* We carefully develop each question of our questionnaires, taking into account language and response options. No cognitive interview participant reported confusion with this sliding scale question. Without scientific justification for changing the response format of this question, we will maintain the current format.

*Comment 1r (verbatim):* In a study setting, subjects may be prone to pay attention to more or all of the information presented throughout the study, including claims designed to be intentionally misleading. As a result, subjects are more likely to be biased based on the strength or weakness of the claims and disclosures presented. The Agency should address what efforts it will take to avoid response bias by presenting these varying degrees of disclosures.

*Response 1r:* The study is designed so that participant will be randomly assigned to condition. Moreover, the only aspect of the participants' experiences that will be varied in the study will be the manipulations that we have described. Any individual differences in attention or ability or potential biases should be spread across experimental conditions. Thus, if we find differences between and among conditions, we can be reasonably sure that the manipulations caused the differences. We have not found in the past that our participants spend an inordinate amount of time viewing stimuli, but we will be careful to place the research in context when we interpret the data.

*Comment 1s (verbatim):* The Consent Text introduction should not state that the survey is being conducted ''on behalf of the U.S. Food and Drug Administration.'' This statement could potentially influence subjects' responses to study questions. Instead, this information might be provided at the conclusion of the study.

*Response 1s:* In previous studies, we took this same view and typically used ''Department of Health and Human Services.'' We will incorporate this change.

*Comment 1t (verbatim):* Questions regarding statements in ads (Consumer Questionnaire Q10, Q20, Q30; HCP Questionnaire Q12, Q22, Q33) should be the first questions presented following the subjects' viewing of a promotional piece. A subject will likely recall the statements that appeared in the promotional piece most accurately immediately after reviewing the piece and before answering other questions that could influence their selection of answers.

*Response 1t:* As with all other aspects of study design, we carefully develop questionnaires with order effects in mind. Therefore, we chose to include questions regarding perception of efficacy or ease of use, information seeking, and behavioral intention first because it is important that participant responses to these items be based solely on the information presented in the ads. The questions referenced by the commenter also include incorrect recall items, which could potentially bias responses to later questions if the order was changed. Additionally, repeated exposures to the correct recall items in the above-referenced questions could have a reinforcing effect that could confound results.

*Comment 1u (verbatim):* In the Consumer Questionnaire, an ''FDA employee'' category, similar to S7 and S8, should be added to the Screener Survey. These individuals should also be terminated from the study.

*Response 1u:* We will revise question S8 to read, ''Do you work for a pharmaceutical company, an advertising agency, a market research company, or the U.S. Department of Health and Human Services?'' to capture these individuals, as suggested.

*Comment 1v (verbatim):* In the Consumer Questionnaire, Q8–Q9 should be presented prior to Q6–Q7 in order to prevent bias in favor of non-HCP sources. Similarly, Q19 should appear before Q18, and Q28 should appear before Q27.

*Response 1v:* We will reorder the questionnaire as the commenter suggested.

*Comment 1w (summarized):* We recommend that Q8–Q9, Q19, and Q28 be expanded to more fully evaluate the role of the prescriber in aiding consumers' understanding of disclaimers in promotional materials.

*Response 1w:* HCPs are often a very important source of information about prescription drugs. However, when prescription drugs are promoted directly to consumers, they may be more likely to look for information on their own before taking steps to consult their HCPs. We have taken this into account in this study by examining the responses of both consumers and HCPs.

*Comment 1x (verbatim):* In the HCP Questionnaire, Q5, Q7, and Q29 should be omitted. Comparative efficacy is highly dependent on the particular HCP subject's experience outside the experiment setting; this question thus may lead to highly variable results. Further, how the drug featured in the mock promotional communication compares to other prescription medications has no relevance to FDA's stated study goals. Questions regarding comparative efficacy should thus be omitted from the proposed HCP Questionnaire.

*Response 1x:* Comparative efficacy questions are another way to assess how HCPs respond to prescription drug promotion. Any subjective experiences outside the experiment setting should fall out because HCPs will be randomly assigned to conditions. The questions are relevant to our study because HCPs make comparative decisions each time they make a prescribing decision.

*Comment 1y (verbatim):* In the HCP Questionnaire, Q34 does not appear to provide appropriate programming instructions for the scenario in which Q33_A=01 and Q33_D=01. FDA should confirm that Q33 may be asked if subjects select both Q33_A and Q33_D, and provide that this question may be repeated for both responses. The variable label text for Q34 should also be rewritten as follows: ''How much did the statement [disclosure] influence your assessment of the scientific evidence for [D]esyflux?''

*Response 1y:* Q33 asks whether participants have seen any of the listed statements. Q34 is asked for each of Q33_A and Q33_D when they respond affirmatively to that statement in Q33. Thus, participants who chose option 01 for both items will see two separate questions. We will make the suggested changes to Q34.

The second public comment responder (*regulations.gov tracking number lkl–8y11–169c)* included four individual comments, to which we have responded.

*Comment 2a (summarized):* FDA should give consideration to the representativeness of online study

volunteers to the general public who will view print ads.

*Response 2a:* This is an excellent point and one to which we have given much thought. As with all research, there is a tradeoff of efficiencies when it comes to collecting information from volunteers. Recruiting from internet panels is a relatively economical way to achieve large sample sizes from all across the United States, making it possible to achieve geographic and urban/rural diversity in a way that was not previously possible. However, it is true that members of lower socioeconomic classes do not have the same access to computers and the internet, and therefore our sample may be skewed toward individuals who have higher education and/or income. We have attempted to mitigate this issue by aiming for recruitment of 60 percent of individuals with some or no college and 40 percent of individuals with a college degree or more.

While it is important to note that random assignment of respondents to experimental conditions provides us the ability to make causal claims about our findings, we do note that truncating the population from which we sample is a limitation of the study and will describe this in any publication or presentation that results from the data.

*Comment 2b (verbatim):* We suggest that the study include electronic advertisements in addition to print advertisements to account for and reflect changes in consumer consumption of media, including the increase of electronic promotion and advertising of products by sponsors.

*Response 2b:* We agree that more information and promotion is moving to electronic presentations, including the internet, mobile applications, and other communication formats. However, the questions we ask in this current study are fundamental questions that should not differ based on presentation format. Moreover, our print ads are similar to what might be shown on a website, which is a prominent electronic format. We have other studies ongoing that are examining other electronic presentation modes (*e.g.,* 82 FR 32842, July 18, 2017).

*Comment 2c (summarized):* If the three levels of disclosure are to be strong, weak, and none, we recommend considering the following levels of disclosure:

- Additional concluding information makes it strong
- Less additional information makes it weak
- No additional information makes it none

*Response 2c:* Thank you for clearly investing time and energy in responding to this study design. The suggested levels of disclosure are effectively the same as what we have included in our study design. The weak disclosure provides some additional information, while the strong disclosure provides both the additional information and an explicit conclusion based on the information.

*Comment 2d (summarized):* FDA should keep in mind that stronger disclosures may be longer, therefore eye-tracking time may reflect length, not necessarily effectiveness.

*Response 2d:* The commenter is correct in that a longer block of text will generally result in a longer gaze fixation. We have taken steps to keep the stronger disclosures as close as possible in length to the weaker disclosures. However, as noted previously, eye-tracking outcomes will be analyzed qualitatively. Our primary interest is whether the disclosure was attended to—the length of attention is of less interest in this case.

The third public comment responder (*regulations.gov tracking number lkl–8y16–bf58*) included five individual comments, to which we have responded.

*Comment 3a (summarized):* The commenter assumes that stimuli will conform to FDA regulations and requirements in non-study aspects and will not overdramatize claims versus disclosures.

*Response 3a:* All stimuli will conform to FDA regulations, as reviewed by OPDP reviewers. Additionally, we have designed the materials to fall within realistic parameters, thus the claims and disclosures are representative of what we may see in the marketplace.

*Comment 3b (summarized):* The commenter includes a section titled ''Comments on the Brief Summary and Provision of Risk Information in Advertising'' wherein FDA is encouraged to continue to consider the purpose and practical limits of advertising.

*Response 3b:* FDA agrees that a consideration of the purpose and practical limits of prescription drug promotion will guide the development of research projects. Otherwise, the comment appears to fall outside the scope of this particular proposed research.

*Comment 3c (summarized):* Add ''Don't Know'' options for questions about perceived effectiveness in the consumer questionnaire.

*Response 3c:* Questions about perceived effectiveness by definition involve subjective rather than objective assessments of effectiveness. Participants have the option to skip these questions if they wish.

*Comment 3d (verbatim):* We suggest also including questions to capture whether respondents have a general understanding that there are limitations to the data and information being presented, even if they do not recall specific information and disclosure statements.

*Response 3d:* This is a good suggestion, but it is important to phrase such questions appropriately. For example, simply asking participants if they believe the data is thorough and complete or that the data has limitations is not likely to yield useful information. However, there are several validated skepticism scales that approach this idea of trusting the validity of presented information. Although these items are not tied to data specifically, they will provide some information for us about how much individuals rely on the data. We have added two questions near the end of the survey to address this issue.

*Comment 3e (summarized):* The commenter recommends deleting ''. . . from a source other than your healthcare provider'' from questions 6 and 7.

*Response 3e:* Because we ask about seeking information from a HCP in other questions, we will retain this distinction in Q6 and Q7 for clarity.

The fourth public comment responder (*regulations.gov tracking number lkl–8y38–n0p8)* included eight individual comments, to which we have responded.

*Comment 4a (summarized):* The commenter is supportive of the research.

*Response 4a:* Thank you for your support.

*Comment 4b (summarized):* The commenter suggests carefully selecting medical conditions to ensure a range of therapeutic areas. Specifically, they suggest one life-threatening condition (*e.g.,* cardiovascular conditions leading to stroke), one chronic condition (*e.g.,* atopic dermatitis), and one non-life-threatening and non-chronic condition (*e.g.,* urinary tract infection).

*Response 4b:* FDA believes this proposed range of medical conditions is a great way to choose therapeutic categories. For the current study, however, we limited ourselves to medical conditions that have existing promotional pieces that include a variety of limitations that can be feasibly explained in a disclosure. We will keep the commenter's approach in mind and apply it in future research when possible.

*Comment 4c (summarized):* The commenter suggests selecting a diversity

of participants, including gender, race, ethnicity, socioeconomic status, etc., to better represent the population at large. Also, FDA should consider inclusion and exclusion criteria for HCPs and consumers carefully.

*Response 4c:* We agree that these characteristics are important and strive to obtain representativeness across a variety of personal demographics. Although we will aim to recruit a diverse group of participants with sufficient variation on demographic characteristics such as gender, race, age, and education, we note that this study features random assignment to condition, whereby these demographic characteristics should have an equal chance of occurring. In terms of HCPs, we will include them if they are primary care physicians, and will work to recruit a sample with sufficient diversity on demographic characteristics as noted above.

*Comment 4d (verbatim):* It is critical that FDA evaluates the merits of unbiased introduction by not presenting a promotional piece to HCPs with specialty in the same therapeutic category.

*Response 4d:* For this study, we will be recruiting only primary care physicians and not specialists. Thus, while any given participant may have experience treating one or more of the conditions represented by our stimuli, none should have specialties in the respective therapeutic categories.

*Comment 4e (summarized):* The commenter encourages the use of a health literacy competency tool such as a readability calculator to ensure consumers can understand the language.

*Response 4e:* We agree that the plain language communication of information is critical for the best public health outcomes. Nevertheless, our aim in this study is to test promotional materials that are available in the public domain. Although we have disguised the products and campaigns in our mock stimuli, all pieces are derived directly from promotion in the marketplace. We feel this is important to ensure that our study is relevant.

*Comment 4f (summarized):* The commenter recommends recruiting through hospitals, doctor offices, and clinics rather than via the internet. The commenter suggests that this will expand on the pool of participants, help minimize potential bias, and ensure the entire population of the United States is represented as not everyone has access to or uses the internet.

*Response 4f:* Please see our response to comment 2a.

*Comment 4g (summarized):* The commenter recommends conducting subgroup analyses, such as with older adults.

*Response 4g:* We will examine covariates including age, race, and education level to determine whether these variables have any effect on our findings. This study is not designed to conduct between-subgroup analyses. If we detect relevant trends, such subgroup analyses may become good candidates for future studies.

*Comment 4h (verbatim):* [The commenter] recommends that the FDA communicate the actions they will take based on the study results and analysis. We also encourage FDA to provide further communication about when FDA will publish the study results, how the study results will be applied, and how this will impact the work of FDA.

*Response 4h:* Please see our response to comment 1a.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours [2] |
|---|---|---|---|---|---|
| **Consumers** | | | | | |
| Pretest Screener | 833 | 1 | 833 | 0.03 (2 minutes) | 25 |
| Pretest | 500 | 1 | 500 | 0.33 (20 minutes) | 165 |
| Eye-Tracking Screener | 80 | 1 | 80 | 0.08 (5 minutes) | 7 |
| Eye-Tracking Study | 20 | 1 | 20 | 1 | 20 |
| Main Study Screener | 2,500 | 1 | 2,500 | 0.03 (2 minutes) | 75 |
| Main Study | 1,500 | 1 | 1,500 | 0.33 (20 minutes) | 495 |
| **HCPs** | | | | | |
| Pretest Screener | 735 | 1 | 735 | 0.03 (2 minutes) | 22 |
| Pretest | 500 | 1 | 500 | 0.33 (20 minutes) | 165 |
| Eye-Tracking Screener | 80 | 1 | 80 | 0.08 (5 minutes) | 7 |
| Eye-Tracking Study | 20 | 1 | 20 | 1 | 20 |
| Main Study Screener | 2,206 | 1 | 2,206 | 0.03 (2 minutes) | 67 |
| Main Study | 1,500 | 1 | 1,500 | 0.33 (20 minutes) | 495 |
| Total | | | | | 1,563 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Rounded to the next full hour.

## II. References

The following references are on display in the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Dodge, T. and A. Kaufman. ''What Makes Consumers Think Dietary Supplements Are Safe and Effective? The Role of Disclaimers and FDA Approval.'' *Health Psychology,* 26(4), 513–517. (2007).
2. Dodge, T., D. Litt, and A. Kaufman. ''Influence of the Dietary Supplement Health and Education Act on Consumer Beliefs About the Safety and Effectiveness of Dietary Supplements.'' *Journal of Health Communication: International Perspectives.* 16(3), 230–244. (2011).

3. Mason, M.J., D.L. Scammon, and X. Feng. ''The Impact of Warnings, Disclaimers and Product Experience on Consumers' Perceptions of Dietary Supplements.'' *Journal of Consumer Affairs,* 41(1), 74–99. (2007).
4. France, K.R. and P.F. Bone. ''Policy Makers' Paradigms and Evidence from Consumer Interpretations of Dietary Supplement Labels.'' *Journal of Consumer Affairs,* 39(1), 27–51. (2005).
5. FTC. ''Full Disclosure.'' Accessed at: *https://www.ftc.gov/news-events/blogs/business-blog/2014/09/full-disclosure* (September 23, 2014) Last accessed on June 22, 2018.
6. Higgins, E., M. Leinenger, and K. Rayner. ''Eye Movements When Viewing Advertisements.'' *Frontiers in Psychology,* 5, 210. (2014).
7. Pieters, R., M. Wedel, and R. Batra. ''The Stopping Power of Advertising: Measures and Effects of Visual Complexity.'' *Journal of Marketing,* 74(5), 48–60. (2010).
8. Thomsen, S. and K. Fulton. ''Adolescents' Attention to Responsibility Messages in Magazine Alcohol Advertisements: An Eye-Tracking Approach.'' *Journal of Adolescent Health,* 41, 27–34. (2007).
9. Simola, J., J. Kuisma, A. Öörni, L. Uusitalo, et al. ''The Impact of Salient Advertisements on Reading and Attention on Web pages.'' *Journal of Experimental Psychology: Applied,* 17(2), 174–190. (2011).
10. Wedel, M. and R. Pieters. ''A Review of Eye-Tracking Research in Marketing.'' In *Review of Marketing Research,* vol. 4 (pp. 123–147), N. K. Malhotra (Ed.). Armonk, New York: M. E. Sharpe. (2008).

Dated: August 3, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–17045 Filed 8–8–18; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–D–2614]**

### Dissolution Testing and Acceptance Criteria for Immediate-Release Solid Oral Dosage Form Drug Products Containing High Solubility Drug Substances; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Dissolution Testing and Acceptance Criteria for Immediate-Release Solid Oral Dosage Form Drug Products Containing High Solubility Drug Substances.'' This guidance has been developed to provide manufacturers with recommendations for submission of new drug applications (NDAs), investigational new drug applications (INDs), or abbreviated new drug applications (ANDAs), as appropriate, for orally administered immediate-release (IR) drug products that contain highly soluble drug substances. The guidance is intended to describe when a standard release test and criteria may be used in lieu of extensive method development and acceptance criteria-setting exercises.

**DATES:** The announcement of the guidance is published in the **Federal Register** on August 9, 2018.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2018–D–2614 for ''Dissolution Testing and Acceptance Criteria for Immediate-Release Solid Oral Dosage Form Drug Products Containing High Solubility Drug Substances.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug

Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Richard Lostritto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 51, Rm. 4132, Silver Spring, MD 20993, 301–796–1697.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled ''Dissolution Testing and Acceptance Criteria for Immediate-Release Solid Oral Dosage Form Drug Products Containing High Solubility Drug Substances.'' This guidance finalizes the draft guidance for industry entitled ''Dissolution Testing and Specification Criteria for Immediate-Release Solid Oral Dosage Forms Containing Biopharmaceutics Classification System Class 1 and 3 Drugs'' (August 2015) (FR 80 46019), and the recommendations in this guidance clarify the recommendations in the guidance for industry entitled ''Dissolution Testing of Immediate Release Solid Oral Dosage Forms'' (August 1997) (FR 62 44974) for high solubility drug substances in IR drug products that meet the conditions described in section III of this guidance. For drug substances that do not meet the conditions in this guidance, sponsors/applicants should follow the recommendations provided in the August 1997 guidance.

The title of this guidance has been revised to better reflect its focus on the solubility of the drug substance in the drug product. Therefore, a direct reference to biopharmaceutics classification system class 1 and class 3 is not necessary because permeability requirements are not within the focus of this guidance.

Drug absorption from a solid dosage form after oral administration depends on the release of the drug substance from the drug product, the dissolution or solubilization of the drug under physiological conditions, and the permeation across the gastrointestinal membrane. NDAs and ANDAs submitted to FDA contain bioavailability (BA) or bioequivalence (BE) data and in vitro dissolution data that, together with chemistry, manufacturing, and controls data, characterize the quality and performance of the drug product. In vitro dissolution data are generally obtained from: (1) Batches used in pivotal clinical and/or BA/BE studies, (2) batches used as stability registration batches, and (3) batches used in other human studies conducted during product development. In general, knowledge about the solubility, permeability, dissolution, and pharmacokinetics of a drug product is considered when defining dissolution acceptance criteria for the drug approval process.

Immediate-release solid oral dosage form drug products containing high solubility drug substances are considered to be relatively low risk regarding the impact of dissolution on in vivo performance, provided the in vitro performance meets or exceeds the recommendations discussed within this guidance. This guidance establishes standard dissolution methodology and acceptance criteria that are appropriate for highly soluble drug substances that are formulated in IR dosage form. The availability of these standards will facilitate the rapid development of dissolution methodology and related acceptance criteria with no requirement to show discriminatory ability of the dissolution method for these products during drug product development. In addition, these standards will facilitate FDA's evaluation of the data submitted in the application.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Dissolution Testing and Acceptance Criteria for Immediate-Release Solid Oral Dosage Form Drug Products Containing High Solubility Drug Substances.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

## II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

## III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: August 3, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–17025 Filed 8–8–18; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–N–0180]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by September 10, 2018.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0810. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications; OMB Control Number 0910–0810—Extension**

In order to conduct educational and public information programs relating to tobacco use as authorized by section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)), FDA's Center for Tobacco Products will create and use a variety of media to inform and educate the public, tobacco retailers, and health professionals about the risks of tobacco use, how to quit using tobacco products, and FDA's role in regulating tobacco.

To ensure that these health communication messages have the highest potential to be received, understood, and accepted by those for whom they are intended, the Center for Tobacco Products will conduct research and studies relating to the control and prevention of disease. In conducting such research, FDA will employ formative pretests. Formative pretests are conducted on a small scale, and their focus is on developing and assessing the likely effectiveness of communications with specific target audiences. This type of research involves: (1) Assessing audience knowledge, attitudes, behaviors, and other characteristics for the purpose of determining the need for and developing health messages, communication strategies, and public information programs and (2) pretesting these health messages, strategies, and program components while they are in developmental form to assess audience comprehension, reactions, and perceptions.

Formative pretesting is a staple of best practices in communications research. Obtaining voluntary feedback from intended audiences during the development of messages and materials is crucial for the success of every communication program. The purpose of obtaining information from formative pretesting is that it allows FDA to improve materials and strategies while revisions are still affordable and possible. Formative pretesting can also avoid potentially expensive and dangerous unintended outcomes caused by audiences' interpreting messages in a way that was not intended by the drafters. By maximizing the effectiveness of messages and strategies for reaching targeted audiences, the frequency with which tobacco communication messages need to be modified should be greatly reduced.

The voluntary information collected will serve the primary purpose of providing FDA information about the perceived effectiveness of messages, advertisements, and materials in reaching and successfully communicating with their intended audiences. Quantitative testing messages and other materials with a sample of the target audience will allow FDA to refine messages, advertisements, and materials, including questionnaires or images, directed at consumers while the materials are still in the developmental stage.

In the **Federal Register** of February 13, 2018 (83 FR 6190), FDA published a 60-day notice requesting public comment on the proposed collection of information. One PRA-related comment was received.

*Comment:* The comment recommends that FDA should research and develop communications about educating adults about the continuum of risk, and educating adults to not provide tobacco products to youth.

*Response:* FDA appreciates the comment. The content and focus on studies submitted through this generic clearance will depend on Agency priorities and needs, and is not yet determined at this time.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Screener | 130,500 | 1 | 130,500 | 0.083 (5 minutes) | 10,831 |
| Self-Administered Surveys | 27,000 | 1 | 27,000 | 0.33 (20 minutes) | 8,910 |
| Total | | | | | 19,741 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of respondents to be included in each new survey will vary, depending on the nature of the material or message being tested and the target audience. The burden for this information collection extension is proposed to increase by 12,613 hours since the last OMB approval. The burden increase is due to an increase in the number of respondents and the categories of respondents.

Dated: August 3, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–17044 Filed 8–8–18; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–N–2495]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Voluntary Labeling Indicating Whether Foods Have or Have Not Been Derived From Genetically Engineered Plants

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with the guidance to assist manufacturers who wish to voluntarily label their foods (human and animal) as being made with or without bioengineering, or the use of bioengineered ingredients, to ensure that labeling is truthful and not misleading.

**DATES:** Submit either electronic or written comments on the collection of information by October 9, 2018.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 9, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of October 9, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2018–N–2495 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Voluntary Labeling Indicating Whether Foods Have or Have Not Been Derived from Genetically Engineered Plants.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

## Voluntary Labeling Indicating Whether Foods Have or Have Not Been Derived From Genetically Engineered Plants

*OMB Control Number 0910–0807—Extension*

This information collection supports Agency guidance. Section 403 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 343) generally governs the labeling of foods. Under section 403(a)(1) of the FD&C Act, a food is misbranded if its labeling is false or misleading in any particular. Section 201(n) of the FD&C Act (21 U.S.C. 321(n)) provides that labeling is misleading if, among other things, it fails to reveal facts that are material in light of representations made or suggested in the labeling, or material with respect to consequences that may result from the use of the food to which the labeling relates under the conditions of use prescribed in the labeling, or

under such conditions of use as are customary or usual.

In the **Federal Register** of May 29, 1992 (57 FR 22984), we published a ''Statement of Policy: Foods Derived from New Plant Varieties'' (the 1992 Policy). The 1992 Policy applies to foods for humans and animals that are developed from new plant varieties, including varieties that are developed using recombinant deoxyribonucleic acid (rDNA) technology, which is often referred to as ''rDNA technology,'' ''genetic engineering,'' ''biotechnology,'' or ''bioengineering,'' and more recently as ''modern biotechnology.'' The 1992 Policy provides guidance to industry on scientific and regulatory issues related to bioengineered foods and solicited written comments from interested persons. It includes guidance on questions to be answered by developers of foods from new plant varieties to ensure that the new products are safe and comply with applicable legal requirements.

The 1992 Policy stated that the method of development of a new plant variety, including plants developed using bioengineering, is not information that is material under section 201(n) of the FD&C Act and, therefore, would not be required in the labeling of food. This conclusion is consistent with our historic interpretation of section 201(n) of the FD&C Act, in that the method of plant breeding is not required to be disclosed in labeling. In the 1992 Policy, we addressed, among other things, the labeling of foods derived from new plant varieties, including plants developed by bioengineering. In the 1992 Policy, we explained that we were not establishing special labeling requirements for foods from bioengineered plants as a class of foods because we did not find any basis for concluding that foods from bioengineered plants, as a class, differ from other foods in any meaningful or uniform way, or that foods developed by the new techniques present any different or greater safety concern than foods developed by traditional plant breeding.

The guidance entitled ''Voluntary Labeling Indicating Whether Foods Have or Have Not Been Derived from Genetically Engineered Plants'' is intended to assist manufacturers that wish to voluntarily label their foods (human or animal) as being made with or without genetic engineering or the use of genetically engineered ingredients, to ensure that such labeling is truthful and not misleading. The guidance is available at *https://www.fda.gov/FoodGuidances.* The information that the manufacturers will collect is documentation of handling practices so that they can truthfully label their products to indicate, if they so choose, whether the food has or has not been developed using genetic engineering.

In general, we anticipate that manufacturers that claim that a product is not developed using bioengineered material would substantiate the claim. We suggest that manufacturers document practices and procedures to substantiate a claim that a food was not developed using genetic engineering. Examples of documentation that we anticipate will demonstrate practices and procedures are recordkeeping, and certifications or affidavits from farmers, processors, and others in the food production and distribution chain. We are neither suggesting that firms maintain a certain set list of documents nor are we suggesting that anything less or different would likely be considered unacceptable. Rather, we are leaving it to each firm's judgment to maintain appropriate documentation to demonstrate that the food was produced using traditional methods.

*Description of Respondents:* The respondents to the proposed collection of information are manufacturers of foods that were or were not derived from genetically engineered plants who wish to voluntarily label their food products.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| Activity | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| Recordkeeping per the Guidance | 85 | 4 | 340 | 1 | 340 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

The number of recordkeepers and respondents reflects the number of food products that are labeled using the terms ''biotechnology'' and ''GMO'' (genetically modified organism). We estimate a recordkeeping burden to retain paperwork to substantiate that the food or ingredient is produced without genetic engineering only for products that are not also already labeled using the term ''organic.'' We did not include products that are labeled ''organic'' in the estimated annual recordkeeping burden because, according to a final rule in the **Federal Register** of December 21, 2000 (65 FR 80548) issued by the Agriculture Marketing Service of the U.S. Department of Agriculture, a food labeled as ''organic'' would not be permitted to contain genetically engineered materials. Thus, there is no additional paperwork burden to substantiate a claim that a product is not developed using genetic engineering for these certified organic products.

We based our estimates of the recordkeeping burden (table 1 of this document) on data from Labelbase by FoodEssentials. Labelbase is a custom online system for accessing consumer-packaged goods product data; the database contains more than 250,000 product labels that can be searched by keyword, ingredient, nutrient, allergen, label claim, or food additive, for example. Using this database, we have identified 540 food manufacturers who produce 2,160 products with the term ''bioengineered'' or ''GMO'' on their labels; this estimate includes manufacturers of human food and pet food. In addition, the National Center for Appropriate Technology's National Sustainable Agriculture Information Center maintains on its website a list of Organic Livestock Feed Suppliers. Using this list, we have identified 54 livestock feed suppliers that would be likely to include a statement about bioengineering on the label of their products and thus would have documentation to substantiate their claim.

Of the 2,160 human food and pet food products that we have identified as using the term ''bioengineered'' or ''GMO'' on their labels (presumably used in a context to designate foods that are not bioengineered), 1,140 of these products (285 manufacturers) also use the term ''organic'' on the label; 1,020 products do not use the term ''organic''

on the label (2,160 − 1,140 = 1,020 products not organics; 540 − 285 = 255 manufacturers of not organic products). In addition, the 54 livestock feed suppliers are also organic producers, thus the 216 products attributed to these manufacturers already are considered to be labeled ''organic.'' Thus, there are 1,020 products made by 255 human food and pet food manufacturers that would need to substantiate that their product or ingredient was not genetically engineered.

We estimate that the burden of maintaining the documentation is a one-time burden; the document to substantiate that the product or ingredient was produced without genetic engineering only needs to be generated once and then kept on file. To annualize this one-time burden, we divide by 3 because paperwork burden collections are approved on a 3-year cycle (255/3 = 85). Thus, we estimate in table 1 that, on average, 85 manufacturers annually will collect and keep information that substantiates their label claim for four products (1,020 products/3 = 340 products/85 manufacturers = 4 products per manufacturer).

We estimate this one-time recordkeeping burden to be 1 hour per product that makes use of a labeling claim, which results in a burden of 1 hour for a total annualized recordkeeping burden of 340 hours (85 manufacturers × 4 records per manufacturer × 1 hour per record).

We do not estimate any reporting burden or third-party disclosure burden associated with this information collection. Manufacturers who want to make use of this voluntary labeling claim option are considered to be those that already have such wording on their products' labels. We do not expect that this guidance will cause labels already in the marketplace to need to be reworded.

Dated: August 3, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–17024 Filed 8–8–18; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–P–0998]**

### Determination That PROLIXIN (Fluphenazine Hydrochloride) Tablets, 1 Milligram, 2.5 Milligrams, 5 Milligrams, and 10 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined that PROLIXIN (fluphenazine hydrochloride) tablets, 1 milligram (mg), 2.5 mg, 5 mg, and 10 mg, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for fluphenazine hydrochloride tablets, 1 mg, 2.5 mg, 5 mg, and 10 mg, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363, *Stacy.Kane@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

PROLIXIN (fluphenazine hydrochloride) tablets, 1 mg, 2.5 mg, 5 mg, and 10 mg, is the subject of NDA 011751, held by Apothecon Pharmaceuticals, a Bristol-Myers Squibb Company, and initially approved on March 15, 1967. PROLIXIN is indicated in the management of manifestations of psychotic disorders.

In a letter dated October 5, 2006, Bristol-Myers Squibb Company requested withdrawal of NDA 011751 for PROLIXIN (fluphenazine hydrochloride) tablets, 1 mg, 2.5 mg, 5 mg, and 10 mg. In the **Federal Register** of February 11, 2009 (74 FR 6896), FDA announced that it was withdrawing approval of NDA 011751, effective March 13, 2009.

Hyman, Phelps & McNamara, P.C. submitted a citizen petition dated March 5, 2018 (Docket No. FDA–2018–P–0998), under 21 CFR 10.30, requesting that the Agency determine whether PROLIXIN (fluphenazine hydrochloride) tablets, 1 mg, 2.5 mg, 5 mg, and 10 mg, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that PROLIXIN (fluphenazine hydrochloride) tablets, 1 mg, 2.5 mg, 5 mg, and 10 mg, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that PROLIXIN (fluphenazine hydrochloride) tablets, 1 mg, 2.5 mg, 5 mg, and 10 mg, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of PROLIXIN (fluphenazine hydrochloride) tablets, 1 mg, 2.5 mg, 5 mg, and 10 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was

withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list PROLIXIN (fluphenazine hydrochloride) tablets, 1 mg, 2.5 mg, 5 mg, and 10 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to PROLIXIN (fluphenazine hydrochloride) tablets, 1 mg, 2.5 mg, 5 mg, and 10 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: August 3, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–17026 Filed 8–8–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Amy F. Petrik, Ph.D., 240–627–3721, *amy.petrik@nih.gov.* Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

**SUPPLEMENTARY INFORMATION:** Technology description follows.

**Stabilized Group 2 Influenza Hemagglutinin Stem Region Trimers and Uses Thereof**

*Description of Technology:* Researchers at the Vaccine Research Center of the National Institute of Allergy and Infectious Diseases (NIAID) have designed influenza vaccine candidates based on group 2 influenza hemagglutinin (HA) proteins. These group 2 HA proteins were engineered to remove the highly variable head region and stabilize the remaining stem region. The researchers then fused the engineered group 2 HA stabilized stem with a ferritin subunit. The resulting fusion protein can self-assemble into nanoparticles which display group 2 HA stem domain trimers on their surface.

These immunogens elicit cross-reactive antibodies to group 2 influenza viruses and could be used in combination with group 1 HA stem-ferritin immunogens as a universal influenza vaccine. Interestingly, a recent study by Andrews et al., Sci. Immunol. 2, eaan2676 (2017), suggests that cross-reactive group 1/group 2 HA stem antibodies may be more likely to be elicited in humans by a group 2 HA immunogen.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

*Potential Commercial Applications:*

- Use as a broadly protective influenza vaccine

*Competitive Advantages:*

- Elicits antibodies to both group 1 and group 2 influenza A viruses
- Nucleic acid or recombinant protein-based vaccine
- Increased ease of production compared to current seasonal influenza vaccines

*Development Stage:*

- In vivo (animal studies)

*Inventors:* Jeffrey C. Boyington, Barney S. Graham, John R. Mascola, Hadi M. Yassine, Syed M. Moin, Lingshu Wang, Kizzmekia S. Corbett, Masaru Kanekiyo (all from NIAID).

*Intellectual Property:* HHS Reference Number E–228–2016 includes U.S. Provisional 62/383,267 filed 2 September 2016 and PCT Patent Application No. PCT/US2017/049894 filed 1 September 2017 (pending).

*Related Intellectual Property:* HHS Reference Number E–293–2011.

*Licensing Contact:* Dr. Amy Petrik, 240–627–3721; *amy.petrik@nih.gov.*

Dated: July 25, 2018.

**Suzanne M. Frisbie,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2018–17036 Filed 8–8–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0138]**

### Agency Information Collection Activities: Biometric Identity

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 30-Day notice and request for comments; revision and extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and will be accepted (no later than September 10, 2018]) to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339,

or CBP website at *https://www.cbp.gov/.*

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (83 FR 24326) on May 25, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

**Overview of This Information Collection**

*Title:* Biometric Identity.

*OMB Number:* 1651–0138.

*Type of Review:* Revision and Extension (with change).

*Current Actions:* This submission is being made to revise the information collection and extend the expiration date with a change to the burden hours due to an increase in the number of respondents in agency estimates and separating the different biometric modalities. *Proposed Change:* CBP is proposing to revise this collection of information to include the collection of biometrics from certain travelers entering and exiting the United States in vehicles. This collection will not impose a time burden on the respondents and may reduce wait times at the ports of entry and exit.

*Affected Public:* Individuals.

*Abstract:* In order to enhance national security, the Department of Homeland Security is developing a biometric based entry and exit system capable of improving the information resources available to immigration and border management decision-makers. These biometrics may include: Digital fingerprint scans, facial images, iris images or other biometrics. Biometrics may be collected from certain travelers entering or exiting the United States in order to verify identity, determine admissibility of those seeking entry into the United States, confirm exit from the United States for the purpose of tracking aliens who have overstayed their visa or are otherwise illegally present in the United States, prevent visa fraud, and identify known or suspected criminals or terrorists. CBP will only store biometric data from those aliens specified in 8 CFR 215.8 and 8 CFR 235.1. U.S. Citizens and aliens who are generally exempt from biometric collection but voluntarily participate in biometric collection will have their biometrics deleted from DHS systems. CBP continues to test and evaluate different technological and operational changes to improve the accuracy and speed of biometric collection.

The federal statutes that mandate DHS to create a biometric entry and exit system include: Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106–215, 114 Stat. 337 (2000); Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106–396, 114 Stat. 1637, 1641 (2000); Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56, 115 Stat. 272, 353 (2001); Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107–173, 116 Stat. 543, 552, (2002); Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638, 3817 (2004); Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, 121 Stat. 266 (2007), Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2242, 2493 (2016), Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009–546 (1997), Section 802 of the Trade Facilitation and Trade Enforcement Act of 2015, Public Law 114–125, 130 Stat. 122, 199 (2015), and Sections 214, 215(a), 235(a), 262(a), 263(a) and 264(c) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1184, 1185(a), 1225(a), 1302(a)(1303(a), 1304(c) and 1365b.

*Fingerprint Modality*

*Estimated Number of Respondents:* 58,657,882.

*Estimated Time per Response:* .0097 hours.

*Estimated Total Annual Burden Hours:* 568,981.

*Facial/Iris Modality*

*Estimated Number of Respondents:* 54,542,118.

*Estimated Time per Response:* .0025 hours.

*Estimated Total Annual Burden Hours:* 136,355.

*Biometrics Collected From Travelers in Vehicles*

*Estimated Number of Respondents:* 300,000.*

*Estimated Time per Response:* None.

*Estimated Total Annual Burden Hours:* None.

* Vehicle time per Respondent is estimated at zero due to no physical response required from the respondent.

Dated: August 6, 2018.

**Seth D. Renkema,**

*Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.*

[FR Doc. 2018–17079 Filed 8–8–18; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1843]**

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment

regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before November 7, 2018.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1843, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**David I. Maurstad,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

| Community | Community map repository address |
|---|---|
| **Benton County, Iowa and Incorporated Areas** | |
| **Project: 17–07–0295S Preliminary Date: March 27, 2018** | |
| City of Atkins | City Hall, 480 3rd Avenue, Atkins, IA 52206. |
| City of Belle Plaine | City Hall, 1207 8th Avenue, Belle Plaine, IA 52208. |
| City of Blairstown | City Hall, 305 Locust Street Northwest, Blairstown, IA 52209. |
| City of Garrison | Garrison Public Library, 201 East Pine Street, Garrison, IA 52229. |
| City of Keystone | City Hall, 208 1st Street, Keystone, IA 52249. |
| City of Newhall | City Hall, 220 1st Street East, Newhall, IA 52315. |
| City of Norway | City Hall, 108 Railroad Street, Norway, IA 52318. |
| City of Shellsburg | City Hall, 108 Main Street Southeast, Shellsburg, IA 52332. |
| City of Urbana | City Hall, 102 Capitol Avenue, Urbana, IA 52345. |
| City of Van Horne | City Hall, 114 Main Street, Van Horne, IA 52346. |
| City of Vinton | City Hall, 110 West 3rd Street, Vinton, IA 52349. |
| Unincorporated Areas of Benton County | Benton County Courthouse, 111 East 4th Street, Vinton, IA 52349. |
| **Grundy County, Iowa and Incorporated Areas** | |
| **Project: 17–07–0295S Preliminary Date: March 27, 2018** | |
| City of Beaman | City Hall, 227 Main Street, Beaman, IA 50609. |

| Community | Community map repository address |
|---|---|
| City of Conrad | City Hall, 204 East Center Street, Conrad, IA 50621. |
| City of Dike | City Hall, 540 Main Street, Dike, IA 50624. |
| City of Grundy Center | City Hall, 703 F Avenue, Suite 2, Grundy Center, IA 50638. |
| City of Holland | City Hall, 106 Main Street, Holland, IA 50642. |
| City of Morrison | City Hall, 204 Sycamore Street, Morrison, Iowa 50657. |
| City of Reinbeck | City Hall, 414 Main Street, Reinbeck, IA 50669. |
| City of Wellsburg | City Hall, 515 North Adams Street, Wellsburg, IA 50680. |
| Unincorporated Areas of Grundy County | County Engineer's Office, 22580 M Avenue, Grundy Center, IA 50638. |
| **Hamilton County, Iowa and Incorporated Areas** | |
| **Project: 16–07–2061S Preliminary Date: March 27, 2018** | |
| City of Ellsworth | City Hall, 1528 DeWitt Street, Ellsworth, IA 50075. |
| City of Jewell | City Hall, 701 Main Street, Jewell, IA 50130. |
| City of Kamrar | City Hall, 414 Elm Street, Kamrar, IA 50132. |
| City of Webster City | City Hall, 400 2nd Street, Webster City, IA 50595. |
| Unincorporated Areas of Hamilton County | Hamilton County Courthouse, 2300 Superior Street, Suite 4, Webster City, IA 50595. |
| **Butler County, Kansas and Incorporated Areas** | |
| **Project: 14–07–2609S and 14–07–2610S Preliminary Date: January 31, 2018** | |
| City of Augusta | City Hall, 113 East 6th Avenue, Augusta, KS 67010. |
| City of El Dorado | Engineering Building, 216 North Vine Street, El Dorado, KS 67042. |
| Unincorporated Areas of Butler County | Butler County Courthouse, 205 West Central Avenue, El Dorado, KS 67042. |
| **Norman County, Minnesota and Incorporated Areas** | |
| **Project: 16–05–5324S Preliminary Date: April 12, 2018** | |
| City of Halstad | Administrative Building, 405 2nd Avenue West, Halstad, MN 56548. |
| City of Hendrum | Administrative Building, 308 Main Street East, Hendrum, MN 56550. |
| Unincorporated Areas of Norman County | County Court House, 16 3rd Avenue East, Ada, MN 56510. |
| **Warren County, Ohio and Incorporated Areas** | |
| **Project: 14–05–6084S Preliminary Date: March 28, 2018** | |
| City of Carlisle | City Hall, 760 West Central Avenue, Carlisle, OH 45005. |
| City of Franklin | City Building, 1 Benjamin Franklin Way, Franklin, OH 45005. |

[FR Doc. 2018–17077 Filed 8–8–18; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### Agency Information Collection Activities: Homeland Security Acquisition Regulation (HSAR) Solicitation of Proposal Information for Award of Public Contracts

**AGENCY:** Office of the Chief Procurement Officer, Department of Homeland Security (DHS).

**ACTION:** 30-Day notice and request for comments; extension of a currently approved collection, 1600–0005.

**SUMMARY:** The DHS Office of the Chief Procurement Officer will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is necessary for compliance with the HSAR and the Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) programs. DHS previously published this information collection request (ICR) in the **Federal Register** on Tuesday, March 13, 2018 for a 60-day public comment period. 15 comment was received by DHS. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until September 10, 2018. This process is conducted in accordance with 5 CFR 1320.1

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, DHS and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** DHS collects information, when necessary, when inviting firms to submit bids, proposals, and offers for public contracts for supplies and service. Using solicitation methods such as requests for proposals (RFP), requests for information (RFI), and broad agency announcements (BAA), the Government requests information from prospective offerors such as pricing information, delivery schedule compliance, and evidence that the offeror has the resources (both human and financial) to accomplish requirements. The information collection is necessary for compliance with the HSAR, 48 CFR chapter 30, and the SBIR and STTR programs, 15 U.S.C. 628. The collections under the HSAR include:

- 3052.209–70 Prohibition on Contracts with Corporate Expatriates (Required in all solicitations and contracts). The offeror must disclose whether it is a foreign incorporated

entity that should be treated as an inverted domestic corporation.

• 3052.209–71 Reserve Officer Training Corps and Military Recruiting on Campus (Required in all solicitations and contracts with institutions of higher education) Requires that the Contractor represent that it does not now have, and agrees that during performance of the contract that it will not adopt, any policy or practice described in paragraph (b) of the clause.

• 3052.209–72 Organizational Conflict of Interest, paragraphs (c), (d) and (e) (Required in all solicitations and contracts where a potential organizational conflict of interest exists and mitigation may be possible). The offeror must disclose whether it is aware of any facts which create any actual or potential organizational conflicts of interest; and, provide information as required by the Government and a mitigation plan relating to the conflict, if applicable.

• 3052.209–74 Limitations on Contractors Acting as Lead System Integrators (Required in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator). The offeror must disclose whether it proposes to perform this contract as a lead system integrator with system responsibility, and whether it has a direct financial interest in the system that is the subject of the solicitation; and, provide evidence, as needed.

• 3052.209–76 Prohibition on Federal Protective Service (FPS) Guard Services Contracts with Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony, paragraphs (a) through (g) (Required in in all solicitations and contracts for FPS guard services). The offeror must disclose whether it is owned, operated or controlled by an individual convicted of any felony. A business concern owned, operated or controlled by an individual convicted of any felony may submit an award request to the Government. The request must include information that is considered personally identifiable information, and any additional information the Government deems necessary.

• 3052.215–70 Key Personnel and Facilities (Required in solicitations and contracts when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel or facilities). Before removing or replacing any of the specified individuals or facilities, the offeror must notify the Government, in writing, before the change becomes effective.

• 3052.219–72 Evaluation of Prime Contractor Participation in the DHS Mentor-Protégé Program (Required in all solicitations containing (HSAR) 48 CFR 3052.219–71, DHS Mentor-Protégé Program and (FAR) 48 CFR 52.219–9 Small Business Subcontracting Plan). The offeror must provide a signed letter of mentor-protégé agreement, if it wishes to receive credit under the source selection factor.

• 3052.247–70 F.o.b. Origin Information (Required in solicitations as appropriate) the offeror must provide information related to the offeror's shipping point.

The DHS Science and Technology (S&T) Directorate issues broad agency announcements BAAs when soliciting white papers and proposals from the public. DHS S&T evaluates white papers and proposals received in response to a DHS S&T BAA using the evaluation criteria specified in the BAA through a peer or scientific review process in accordance with FAR 35.016(d). Unclassified white papers and proposals are typically collected via the DHS S&T BAA secure website, while classified white papers and proposals must be submitted via proper classified courier or proper classified mailing procedures as described in the National Industrial Security Program Operating Manual (NSPOM).

Federal agencies with an annual extramural research and development (R&D) budget exceeding $100 million are required to participate in the SBIR Program. Similarly, Federal agencies with an extramural R&D budget exceeding $1 billion are required to participate in the STTR Program. Federal agencies who participate in the SBIR and STTR programs must collect information from the public to meet:

1. Applicable reporting requirements under 15 U.S.C. 638(b)(7), (g)(8), (i), (j)(1)(E), (j)(3)(C), (l), (o)(10), and (v);

2. The requirement to maintain both a publicly accessible database of SBIR/STTR award information and a government database of SBIR/STTR award information for SBIR and STTR program evaluation under 15 U.S.C. 638g(10), (k), (o)(9), and (o)(15); and

3. Requirements for public outreach under 15 U.S.C. 638(j)(2)(F), (o)(14), and (s).

The prior information collection request for OMB No. 1600–0005 was approved through June 30, 2018 by OMB in a Notice of OMB Action.

The information being collected is used by the Government's contracting officers and other acquisition personnel, including technical and legal staff to determine the adequacy of technical and management approach, experience, responsibility, responsiveness, and expertise of the firms submitting offers; the identification of members of the public (*i.e.,* small businesses) who qualify for and are interested in participating in the DHS SBIR Program; and, provide the DHS SBIR Program Office necessary and sufficient information to determine whether proposals submitted by the public to the DHS SBIR Program meet the criteria for consideration under the program.

Failure to collect this information would adversely affect the quality of products and services DHS receives from contractors. Potentially, contracts would be awarded to firms without sufficient experience and expertise, thereby placing the Department's operations in jeopardy. Defective and inadequate contractor deliverables would adversely affect DHS's fulfillment of the mission requirements in all areas. Additionally, the Department would be unsuccessful in identifying small businesses with R&D capabilities, which would adversely affect the mission requirements in this area.

Many sources of the requested information use automated word processing systems, databases, and web portals to facilitate preparation of material to be submitted and to post and collect information. It is common place within many of DHS's Components for submissions to be electronic as a result of implementation of e-Government initiatives.

Information technology (*i.e.,* electronic web portal) is used in the collection of information to reduce the data gathering and records management burden. DHS uses a secure website the public can use to propose SBIR research topics and submit proposals in response to SBIR solicitations. In addition, DHS uses a web portal to review RFIs and register to submit a white paper or proposal in response to a specific BAA. The data collection forms standardize the collection of information that is necessary and sufficient for the DHS SBIR Program Office to meet its requirements under 15 U.S.C. 638.

DHS/ALL/PIA–006 General Contact Lists dated June 15, 2007 covers the basic contact information that must be collected for DHS. Other information collected will typically pertain to the contract itself, and not individuals. All information for this information collection is submitted voluntarily. However, sensitive information (*e.g.,* felony conviction information) may also be collected through this information collection. Due to this sensitivity, and the sensitivities regarding the procurement process as a whole, a new

Privacy Impact Assessment (PIA) is required to document and identify any potential risks associated with collecting this information. There is no assurance of confidentiality provided to the respondents.

The burden estimates provided in response to Item 12 above are based upon definitive proposals reported by DHS and its Components to the Federal Procurement Data System (FPDS) for Fiscal Year 2016. No program changes occurred and there have been no changes to the information being collected. However, the burden was adjusted to reflect an agency adjustment increase of 103,600 in the number of respondents within DHS for Fiscal Year 2016, as well as an increase in the average hourly wage rate. In addition, the average response per respondent went from 7 to 3.5 per response, a difference of 3.5 hours. The change is a result of the DHS Heads of Contracting Activities' reassessment of the response time required for each of the applicable clauses.

This is an extension of a currently approved collection, 1600–0005. DHS previously published this ICR in the **Federal Register** on Tuesday, March 13, 2018 at 83 FR 10865 for a 60-day public comment period, and is soliciting public comment for another 30 days. OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

**Analysis**

*Agency:* Office of the Chief Procurement Officer, DHS.

*Title:* Agency Information Collection Activities: Homeland Security Acquisition Regulation (HSAR) Solicitation of Proposal Information for Award of Public Contracts.

*OMB Number:* 1600–0005.

*Frequency:* Annually.

*Affected Public:* Private and Public Sector.

*Number of Respondents:* 117,212.

*Estimated Time per Respondent:* 3.5 hours.

*Total Burden Hours:* 1,230,726.

Dated: July 16, 2018.

**Melissa Bruce,**

*Executive Director, Enterprise Business Management Office.*

[FR Doc. 2018–17021 Filed 8–8–18; 8:45 am]

BILLING CODE 9110–9B–P

## DEPARTMENT OF THE INTERIOR

### U.S. Geological Survey

**[GX18GL00DT7ST00; OMB Control Number 1028–0087; Renewal]**

### Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; National Geological and Geophysical Data Preservation Program (NGGDPP) Grant Opportunity

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of Information Collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the U.S. Geological Survey (USGS) is proposing to renew authorization for information collection from state geological surveys that request NGGDPP funds to preserve geoscience materials and data, and submit this information collection request (ICR) to Office of Management and Budget described below.

**DATES:** Interested persons are invited to submit comments on or before September 10, 2018.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to USGS, Information Collections Clearance Officer, 12201Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0087, National Geological and Geophysical Data Preservation Program, in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Lindsay Powers by email at *lpowers@usgs.gov,* or by telephone at (303) 202–4828. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** We, the USGS, in accordance with the Paperwork Reduction Act of 1995, provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 18, 2018, 83 FR 17187. No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* This notice concerns the collection of information that is sufficient and relevant to evaluate and select proposals for funding under the NGGDPP. We will accept proposals from state geological surveys requesting funds to inventory and assess the condition of current collections and data preservation needs. Financial assistance will be awarded annually on a competitive basis following the evaluation and ranking of state proposals by a review panel composed of representatives from the U.S.

Department of the Interior, state geological surveys, and academic institutions. To submit a proposal, respondents must complete a project narrative and submit the application via *www.grants.gov.* Grant recipients must complete a final technical report at the end of the project period. Narrative and report guidance is available at *http://datapreservation.usgs.gov* and *www.grants.gov.*

Annual data preservation priorities are provided in the Program Announcement as guidance for applicants to consider when submitting proposals. Since its inception in 2007, NGGDPP has awarded 46 states with $7,043,000, which, when matched or exceeded by the states, amounts to over $14 million invested in the rescue and preservation efforts. This notice concerns the collection of information that is sufficient and relevant to evaluate and select proposals for funding. We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We intend to release the project abstracts and identify states for awarded/funded projects only.

*Title of Collection:* National Geological and Geophysical Data Preservation Program (NGGDPP).

*OMB Control Number:* 1028–0087.

*Form Number:* NA.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* All state geological surveys may apply for NGGDPP grants.

*Total Estimated Number of Annual Respondents:* 35.

*Total Estimated Number of Annual Responses:* 70 (35 applications, 35 final technical report submissions).

*Estimated Completion Time per Response:* Grant application time estimate is 80 hours; final technical report completion time estimate is 10 hours.

*Total Estimated Number of Annual Burden Hours:* 3,150.

*Respondent's Obligation:* Required to Obtain a Benefit.

*Frequency of Collection:* Annually.

*Total Estimated Annual Non-hour Burden Cost:* None.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Dated: August 6, 2018.

**Lindsay Powers,**

*NGGDPP Coordinator.*

[FR Doc. 2018–17073 Filed 8–8–18; 8:45 am]

**BILLING CODE 4338–11–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1108]**

## Certain Jump Rope Systems; Commission Determination Not To Review an Initial Determination Finding Sole Respondent in Default; Request for Written Submissions on Remedy, Bonding, and the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (Order No. 6), finding the sole respondent, Suzhou Everise Fitness Co., Ltd. of Jiangsu, China, in default. The Commission requests written submissions, under the schedule set forth below, on remedy, bonding, and the public interest.

**FOR FURTHER INFORMATION CONTACT:** Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on April 18, 2018, based on a complaint filed by Jump Rope Systems, LLC of Louisville, Colorado (''Complainant''). 83 FR 17190 (Apr. 18, 2018). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain jump rope systems by reason of infringement of certain claims of U.S. Patent Nos. 7,789,809 and 8,136,208. The notice of investigation named one respondent: Suzhou Everise Fitness Co., Ltd. of Jiangsu, China (''Respondent''). The Office of Unfair Import Investigations (''OUII'') also was named as a party to the investigation.

The complaint and notice of investigation were served on Respondent on April 13, 2018. However, Respondent did not respond to the complaint or notice of investigation.

On May 31, 2018, Complainant filed an amended motion for an order to show cause directing Respondent to demonstrate why it should not be found in default for failing to respond to the complaint and notice of investigation, or otherwise participate in the investigation. On June 6, 2018, OUII filed a response, supporting the motion. No other responses were filed.

On June 12, 2018, the presiding administrative law judge (''ALJ'') issued Order No. 5, ordering Respondent to show why it should not be found in default. No response was filed.

On July 10, 2018, the ALJ issued the subject ID (Order No. 6), finding Respondent in default under Commission Rule 210.16 (19 CFR 210.16) and terminating the proceedings before the ALJ in their entirety. No petitions for review were filed.

The Commission has determined not to review the subject ID. Section 337(g)(1) (35 U.S.C. 1337(g)(1)) and Commission Rule 210.16(c) (19 CFR 210.16(c)) authorize the Commission to order relief against a respondent found in default, unless, after considering the public interest, it finds that such relief should not issue.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in Respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for

purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (Dec. 1994), Comm'n Op. at 7–10.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* Parties to the investigation, including OUII, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the date that the asserted patents expire and the HTSUS numbers under which the accused products are imported, and provide identification information for all known importers of the subject articles. The written submissions and proposed remedial orders must be filed no later than close of business on August 20, 2018. Reply submissions must be filed no later than the close of business on August 27, 2018. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1108'') in a prominent place on the cover page and/or the first page. *See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.* Persons with questions regarding filing should contact the Secretary at (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

[1] All contract personnel will sign appropriate nondisclosure agreements.

Issued: August 6, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–17070 Filed 8–8–18; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1378–1379 (Final)]**

## Low Melt Polyester Staple Fiber From Korea and Taiwan

### Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of low melt polyester staple fiber (PSF) from Korea and Taiwan that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2] [3]

### Background

The Commission instituted these investigations effective June 27, 2017, following receipt of a petition filed with the Commission and Commerce by Nan Ya Plastics Corporation, America, Livingston, New Jersey. The Commission scheduled the final phase of the investigations following notification of preliminary determinations by Commerce that imports of low melt PSF from Korea and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 26, 2018 (83 FR 8295). A revised schedule was

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] *Low Melt Polyester Staple Fiber From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part, 83 FR 29094 (June 22, 2018); Low Melt Polyester Staple Fiber From Taiwan: Final Determination of Sales at Less Than Fair Value,* 83 FR 29099 (June 22, 2018).

[3] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on Korea.

published on May 9, 2018 (83 FR 21306). The hearing was held in Washington, DC, on June 19, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on August 6, 2018. The views of the Commission are contained in USITC Publication 4808 (August, 2018), entitled *Low Melt Polyester Staple Fiber from Korea and Taiwan: Investigation Nos. 731–TA–1378–1379 (Final).*

By order of the Commission.

Issued: August 6, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–17071 Filed 8–8–18; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1081]**

### Certain LED Lighting Devices, LED Power Supplies, and Components Thereof; Commission Determination To Amend the Notice of Investigation To Delete an Erroneously Included Respondent

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to amend the notice of investigation to delete the erroneously included respondent Edgewell Personal Care Brands LLC.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on November 8, 2017, based on a complaint filed by Phillips Lighting North America Corp. of Somerset, New Jersey, and Phillips Lighting Holding B.V. of Eindhoven, Netherlands (together, ''Phillips''). 82 FR 51872. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain LED lighting devices, LED power supplies, and components thereof that infringe certain claims of U.S. Patent Nos. 6,586,890; 7,038,399; 7,256,554; 7,262,559; and 8,070,328 (''the '328 patent''). *Id.* The **Federal Register**'s notice of investigation names as respondents Feit Electric Company, Inc., of Pico Rivera, California; Edgewell Personal Care Brands, LLC of Shelton, Connecticut (''Edgewell''); Feit Electric Company, Inc. (China) of Xiamen, China; Lowe's Companies of Mooresville, North Carolina; L G Sourcing of North Wilkesboro, North Carolina; MSi Lighting, Inc. of Boca Raton, Florida; Satco Products, Inc. of Brentwood, New York; Topaz Lighting Corp. of Holtsville, New York; Wangs Alliance Corporation d/b/a WAC Lighting Co. of Port Washington, New York; and WAC Lighting (Shanghai) Co. Ltd., of Shanghai, China. *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.* The Commission previously terminated the investigation with respect to the '328 patent. Order No. 44 (May 22, 2018), *not reviewed* Notice (June 11, 2018).

Neither the original complaint nor the amended complaint makes any allegations against Edgewell. The **Federal Register** notice of investigation, however, names Edgewell as a respondent. Under Commission Rule 210.14(b) (19 CFR 210.14(b)), good cause exists to amend the notice of investigation to correct this error by deleting Edgewell.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 6, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–17072 Filed 8–8–18; 8:45 am]

**BILLING CODE 7020–02–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

**AGENCY:** Advisory Committee on Rules of Civil Procedure, Judicial Conference of the United States.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Civil Procedure will hold a meeting on November 1, 2018. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

**DATES:** November 1, 2018

**TIME:** 9:00 a.m. to 5:00 p.m.

**ADDRESSES:** Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, Administrative Office of the United States Courts, One Columbus Circle NE, Washington, DC 20544.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Staff, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: August 6, 2018.

**Rebecca A. Womeldorf,**

*Rules Committee Secretary.*

[FR Doc. 2018–17091 Filed 8–8–18; 8:45 am]

**BILLING CODE 2210–55–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory; Committee on Rules of Appellate Procedure

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** The Advisory Committee on Rules of Appellate Procedure will hold a meeting on October 26, 2018. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the

meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

**DATES:** October 26, 2018.

**TIME:** 9:00 a.m. to 5:00 p.m.

**ADDRESSES:** Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, Administrative Office of the United States Courts, One Columbus Circle NE, Washington, DC 20544.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Staff, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: August 6, 2018.

**Rebecca A. Womeldorf,**

*Rules Committee Secretary.*

[FR Doc. 2018–17090 Filed 8–8–18; 8:45 am]

**BILLING CODE 2210–55–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Advisory Committees on the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and the Federal Rules of Evidence; Hearings on Proposed Amendments to the Appellate, Bankruptcy, Civil, and Evidence Rules

**AGENCY:** Advisory Committees on the Federal Rules of Appellate, Bankruptcy, and Civil Procedure, and the Federal Rules of Evidence, Judicial Conference of the United States.

**ACTION:** Notice of proposed amendments and open hearings.

**SUMMARY:** The Advisory Committees on Appellate, Bankruptcy, Civil, and Evidence Rules have proposed amendments to the following rules:

*Appellate Rules:* 35, 40.

*Bankruptcy Rules:* 2002, 2004, 8012.

*Civil Rule:* 30.

*Evidence Rule:* 404.

The text of the proposed rules and the accompanying committee notes are posted on the Judiciary's website at: *http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment.*

All written comments and suggestions with respect to the proposed amendments may be submitted on or after the opening of the period for public comment on August 15, 2018, but no later than February 15, 2019. Written comments must be submitted electronically, following the instructions provided on the website. All comments submitted will be posted on the website and available to the public.

Public hearings are scheduled on the proposed amendments as follows:

- Appellate Rules in Washington, DC, on October 26, 2018, and in Phoenix, Arizona, on January 4, 2019;
- Bankruptcy Rules in Washington, DC, on January 10, 2019, and in Kansas City, Missouri, on January 26, 2019;
- Civil Rules in Phoenix, Arizona, on January 4, 2019, and in Washington, DC, on February 8, 2019; and
- Evidence Rules in Phoenix, Arizona, on January 4, 2019, and in Washington, DC, on January 18, 2019.

Those wishing to testify must contact the Secretary of the Committee on Rules of Practice and Procedure by email at: *RulesCommittee_Secretary@ao.uscourts.gov,* at least 30 days before the hearing.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–240, Washington, DC 20544, Telephone (202) 502–1820.

Dated: August 6, 2018.

**Rebecca A. Womeldorf,**

*Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.*

[FR Doc. 2018–17092 Filed 8–8–18; 8:45 am]

**BILLING CODE 2210–55–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On August 3, 2018, the Department of Justice lodged a proposed consent decree with the United States District Court for the Middle District of Florida in the lawsuit entitled *United States, State of Indiana, and the Oklahoma Department of Environmental Quality* v. *Anchor Glass Container Corporations, Inc.,* Civil Action No. 3:18–cv–943–J–39MCR.

In this action, the United States, the State of Indiana, and the Oklahoma Department of Environmental Quality filed a complaint pursuant to Section 113(b) of the Clean Air Act (CAA), 42 U.S.C. 7413, and relevant corollary and implementing state regulations and programs, seeking injunctive relief and civil penalties for alleged violations of these laws at Anchor Glass Container Corporations, Inc.'s glass manufacturing facilities. Anchor's facilities are located in Jacksonville, Florida; Warner Robins, Georgia; Elmira, New York; Lawrenceburg, Indiana; Shakopee, Minnesota; and Henryetta, Oklahoma.

The proposed settlement requires Anchor to implement pollution controls to reduce its nitrogen oxide ($NO_X$ emissions at nine of its eleven furnaces (two furnaces already have pollution controls installed), and the company will meet more stringent $NO_X$ emissions limits at all of its furnaces. Anchor will also implement pollution controls and take other actions to reduce sulfur dioxide ($SO_2$ and particulate matter (PM) emissions. The settlement also requires Anchor to install and operate continuous emissions monitors for $NO_X$ and $SO_2$ at all eleven of its glass furnaces and to install continuous opacity monitors required by the Clean Air Act. Additionally, Anchor will complete two mitigation projects, a woodburning appliance change-out project and a project to repower, retrofit, or replace vehicle diesel engines, further reducing $NO_X$, $SO_2$, and PM emissions. Also as part of the settlement, Anchor will pay a $1.1 million civil penalty ($550,000 to the United States and $275,000 each to the States of Indiana and Oklahoma).

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *United States, State of Indiana, and the Oklahoma Department of Environmental Quality* v. *Anchor Glass Container Corporations, Inc.,* Civil Action No. 3:18–cv–943–J–39MCR, D.J. Ref. No. 90–5–2–1–10406. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| To submit comments: | Send them to: |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $26.75 (25 cents per page

reproduction cost) payable to the United States Treasury.

**Henry Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2018–17023 Filed 8–8–18; 8:45 am]

**BILLING CODE 4410–15–P**

## NATIONAL CREDIT UNION ADMINISTRATION

**RIN 3133–AE85**

## NCUA Suspension and Debarment Procedures

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final suspension and debarment procedures.

**SUMMARY:** On March 15, 2018, the NCUA Board (Board) proposed new suspension and debarment procedures to protect the Federal Government's interest in only doing business with presently responsible contractors. After consideration of public comments, this notice sets forth the NCUA's final procedures for suspension and debarment and establishes administrative processes for contractors subject to the procedures. The final procedures will appear on the NCUA's public website.

**DATES:** These final procedures are applicable September 10, 2018.

**FOR FURTHER INFORMATION CONTACT:** Kevin Tuininga, Associate General Counsel for Administrative Law, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6543.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Comments Received
III. The Final Procedures
IV. Regulatory Procedures

### I. Background

On March 15, 2018, the NCUA Board (Board) proposed new suspension and debarment procedures as part of its efforts to modernize its procurement processes. These proposed procedures were intended to implement best practices in spending funds available to the NCUA, including those in the agency's Operating Fund and the National Credit Union Share Insurance Fund. Although the NCUA is not required to follow government-wide acquisition laws and regulations, those laws and regulations have proven effective and include guidelines developed over years of seeking public comment on expenditure processes. Suspension and debarment remedies are now an important component of government procurement programs. After considering comments received, the Board has decided to adopt the procedures as proposed.

### II. Comments Received

The Board received three comments on the proposal. Commenters included two national credit union trade associations and one regional trade association. All three commenters supported the proposal. One commenter suggested that the agency ''consult with the [Office of the Inspector General] regarding whether such procedures would be of benefit to the NCUA Office of General Counsel.''

The Board values these comments and believes it should adopt the procedures as proposed. Implementing these procedures in the near term ensures prompt compliance with the NCUA Inspector General's recommendations. The Board is open to further recommendations of the Inspector General but, at this developing stage, declines to extend the final procedures to legal services agreements. Lawyers are subject to codes of professional responsibility related to their bar memberships, which already impose the highest standards of ethical conduct and include avenues for disciplinary action that can preclude further practice of law. This approach also aligns with the current practice of the Federal Deposit Insurance Corporation, which excludes law firms and lawyers from its contractor suspension and debarment procedures.[1]

### III. The Final Procedures

As discussed above, the Board has chosen to adopt the procedures as proposed. For a complete discussion of all eight sections of the procedures, please see the preamble to the proposed procedures at 83 FR 12318 (Mar 21, 2018) or *https://www.gpo.gov/fdsys/pkg/FR-2018-03-21/pdf/2018-05626.pdf.* The Board will post the final procedures on the NCUA website.

### IV. Regulatory Procedures

*A. Regulatory Flexibility Act*

For any final rule it adopts, the Regulatory Flexibility Act (RFA) requires the NCUA to prepare a final regulatory flexibility analysis that, among other things, describes the steps the agency has taken to minimize economic impact on small entities (currently defined by the NCUA as federally insured credit unions with under $100 million in assets), unless the NCUA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

As discussed in the proposal, the NCUA does not expect the final Suspension and Debarment Procedures would ever apply to a federally insured credit union. In addition, the NCUA does not expect that the Procedures would have a significant economic impact on any other small businesses, as defined in the RFA and as further established by the Office of Advocacy of the Small Business Administration.

The final procedures closely follow the suspension and debarment procedures of the Federal Acquisition Regulation, which already applies to government contractors, without imposing any additional economic burden. To the extent of any variation from the Federal Acquisition Regulations, the final procedures contain no recordkeeping or substantive regulatory requirements, varying only in adjudication processes. The final procedures therefore will not have a significant economic impact on a substantial number of federally insured credit unions under $100 million in assets or on other small entities as defined by the Small Business Administration. Accordingly, the NCUA has determined and certifies that the final procedures will not have a significant economic impact on a substantial number of small entities. No final regulatory flexibility analysis is required.

*B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden.[2] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. The final procedures will not create any new paperwork burden that meets the definition of an information collection. Thus, the NCUA has determined that these final procedures do not increase the paperwork requirements under the PRA and regulations of the Office of Management and Budget.

*C. Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as

[1] 12 CFR 367.1(c).

[2] 44 U.S.C. 3507(d).

defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. These final procedures will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that the final procedures do not constitute a policy that has federalism implications for purposes of the executive order.

*D. Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that these final procedures will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

By the National Credit Union Administration Board on August 2, 2018.

**Gerard Poliquin,**

*Secretary of the Board.*

For the reasons discussed above, the Board adopts the following NCUA Suspension and Debarment Procedures:

## NCUA Suspension and Debarment Procedures

*A. Purpose*

The purpose of these suspension and debarment procedures is to establish an administrative process to protect the Government's interest in only doing business with presently responsible contractors. The NCUA [1] shall only solicit offers from, award contracts to, and consent to subcontracts with presently responsible contractors. These procedures implement the NCUA's policies for suspension and debarment and establish administrative proceedings for contractors subject to the policies.

*B. Authority*

The NCUA's suspension and debarment authority derives from the Federal Credit Union Act 12 U.S.C. 1751 *et seq.,* and 12 U.S.C. 1766(i)(2), specifically. The NCUA is not required to follow the Federal Acquisition Regulation but uses the principles therein for best practice guidance. The Federal Acquisition Regulation (FAR) section on suspension and debarment is located at 48 CFR part 9, subpart 9.4. The NCUA also has its own Acquisition Policy Manual.

*C. Definitions*

1. Action Referral Memorandum (ARM). The investigative report developed and compiled by an NCUA office recommending that the Suspending and Debarring Official (SDO) take a suspension or debarment action against a contractor.

2. Administrative Agreement. Administrative Agreements are usually entered into in lieu of suspension or debarment actions. Typically the agreements include acceptance of responsibility, voluntary exclusion by the contractor, some provision of restitution, any contractor responsibilities with respect to codes of conduct, training, and the contractor's promise to report progress to the NCUA, and generally include consequences for breach of the agreement. The terms of the Administrative Agreement and contents will be determined on a case-by-case basis.

3. Administrative Record. The entire record of information and proceedings. This includes all information considered by the SDO that is the basis of the final decision.

4. Affiliates. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor that has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

5. Civil Judgement. A judgement or finding of a civil offense by a court of competent jurisdiction.

6. Contractor. Contractor means any individual or other legal entity that: (1) Directly or indirectly (for example, through an affiliate), submits offers for, or is awarded, or reasonably may be expected to submit offers for, or be awarded, a Government contract or a subcontract under a Government contract; or (2) conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative or another contractor.

7. Debarment. A final decision made by the SDO to exclude a contractor from Government contracting and Government-approved subcontracting or covered transactions for a reasonable, specified period (usually not exceeding three years). A contractor is first proposed for debarment and afforded an opportunity to present its defenses and mitigating factors.

a. Fact-Based Debarment. The cause for the debarment is based on factual circumstances (for example, history of poor performance or willful misconduct). The NCUA must be able to prove the action by a ''preponderance of the evidence.'' Preponderance of the evidence means that the fact(s) at issue are more likely than not (over 50%) to be true. A contractor, based upon a preponderance of the evidence, can be debarred for any of the following:

i. Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as:

1. Willful failure to perform in accordance with the terms of one or more contracts; or

2. a history of failure to perform, or of unsatisfactory performance of, one or more contracts.

ii. Violations of a Drug-Free Workplace, as indicated by:

1. Failure to comply with the requirements of a Drug-Free Workplace; or

2. such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.[2]

iii. Intentionally affixing a label bearing a ''Made in America'' inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States.[3]

iv. Commission of an unfair trade practice.[4]

v. Delinquent Federal taxes in an amount that exceeds $3,500. Federal taxes are considered delinquent for purposes of this provision if the *tax liability is finally determined (i.e., assessed)* ***and*** *the taxpayer is delinquent in making payment.*

vi. Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the

[1] Throughout these procedures, unless otherwise noted, the ''NCUA'' refers the NCUA in its agency capacity and also to the NCUA Board as conservator or liquidating agent for an insured credit union. Legal services contracts the NCUA enters into in any capacity, through the Office of General Counsel, are not subject to these suspension and debarment procedures.

[2] 41 U.S.C. chapter 81.

[3] Section 202 of the Defense Production Act; Public Law 102–558.

[4] Section 201 of the Defense Production Act; Public Law 102–558.

Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of:

1. Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations; [5]

2. violation of the civil False Claims Act; [6] or

3. significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments.

vii. A contractor, based on a determination by the Secretary of Homeland Security or the Attorney General of the United States, not in compliance with Immigration and Nationality Act employment provisions.[7] Such determination is not reviewable in the debarment proceedings.

viii. A contractor has miscertified its status as a minority- and/or women-owned business.

ix. Any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

b. Conviction-Based Debarment. A debarment action based on a conviction or civil judgement. A contractor can be debarred for a conviction or civil judgement based on one or more of the following circumstances:

i. Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract.

ii. Violation of Federal or State antitrust statutes relating to the submission of offers.

iii. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property.

iv. Intentionally affixing a label bearing a ''Made in America'' inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States.[8]

v. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

8. Imputation. Attributing the misconduct of an individual or organization to another individual or organization by virtue of the latter's knowledge or implied knowledge of the misconduct. An agency may impute the basis of a suspension or debarment through the following relationships: Individual to organization; organization to individual; individual to individual; and joint ventures.

9. Indictment. An indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.

10. Presentation of Matters in Opposition (PMIO). The contractor may submit matters in opposition to the suspension or proposed debarment. The contractor may submit matters in person, in writing, or through a representative. The contractor may also use a combination of those methods.

11. Present Responsibility. A contractor is presently responsible if the contractor is ethical, honest, competent, and has not acted in any way that reveals a lack of business integrity or business honesty, or an inability to satisfactorily perform Government contracts.

12. System for Award Management (SAM). SAM is the exclusion database that applies across the Executive Branch. SAM is an official U.S. Government system.

13. Suspension. A suspension is an immediate, but temporary (usually 12 months), measure imposed by the SDO, rendering a contractor ineligible to receive new Government contracts or subcontracts, pending the outcome of a legal proceeding or investigation that could give rise to a debarment.[9]

a. Adequate Evidence for Suspension. The NCUA must have adequate evidence and an immediate need to suspend a contractor. Adequate evidence is information sufficient to support a reasonable belief that a particular act or omission has occurred. A contractor can be suspended upon adequate evidence of one or more the following:

i. Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract.

ii. Violation of Federal or State antitrust statutes relating to the submission of offers.

iii. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property.

iv. Violations of a Drug-Free Workplace, as indicated by:

1. Failure to comply with the requirements of a Drug-Free Workplace; or

2. Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.[10]

v. Intentionally affixing a label bearing a ''Made in America'' inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States.[11]

vi. Commission of an unfair trade practice.[12]

vii. Delinquent Federal taxes in an amount that exceeds $3,500. Federal taxes are considered delinquent for purposes of this provision if the *tax liability is finally determined (i.e., assessed)* ***and*** *the taxpayer is delinquent in making payment.*

viii. Knowing failure by a principal, until three years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of:

1. Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations; [13]

2. violation of the civil False Claims Act; [14] or

3. significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments.

ix. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

[5] Title 18 U.S.C.

[6] 31 U.S.C. 3729–3733.

[7] Executive Order 12989, as amended by Executive Order 13286.

[8] Section 202 of the Defense Production Act; Public Law 102–558.

[9] If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests an extension, in which case it may be extended for six months. Suspensions cannot extend beyond 18 months unless legal proceedings have been initiated within that period. The NCUA shall notify the Department of Justice of the proposed termination of the suspension, at least 30 days before the 12-month period expires to give the Department of Justice an opportunity to request an extension.

[10] 41 U.S.C. chapter 81.

[11] Section 202 of the Defense Production Act; Public Law 102–558.

[12] Section 201 of the Defense Production Act; Public Law 102–558.

[13] Title 18 U.S.C.

[14] 31 U.S.C. 3729–3733.

An indictment for any of the foregoing will be considered adequate evidence for suspension.

*D. Responsibilities*

1. NCUA Executive Director. The Executive Director has the authority to approve the award of a contract or subcontract to an ineligible contractor for compelling reasons. Decisions to award a contract or subcontract to ineligible contractors must be documented in writing in advance of an award.

2. The Suspending and Debarring Official (SDO). The Deputy General Counsel serves as the SDO. The SDO decides whether to impose a suspension and debarment action. The decision whether to suspend or debar is a business decision and, unless mandated by statute or executive order, is discretionary. The SDO decides whether to send out a Notice of Suspension or a Notice of Proposed Debarment, issue a Show Cause Letter, or take no action. Upon commencing a formal action, the SDO reviews the ARM, considers any PMIO submitted or presented by the contractor, and determines whether a fact-finding proceeding is necessary. The SDO may negotiate an Administrative Agreement with the contractor. The SDO's final decision is based on the ARM and the entire Administrative Record.

3. Office of the General Counsel (OGC). OGC provides legal advice regarding the suspension and debarment program to the NCUA. OGC reviews the ARM, any other notices and correspondence, the Administrative Record, the SDO decision, any Administrative Agreement and other documents for legal sufficiency. OGC also reviews and concurs in any decision from the OCFO, to terminate or void contracts held by suspended, debarred, or proposed-for-debarment contractors.

4. SDO Admin. The SDO Admin is a procurement attorney in OGC. The SDO Admin receives referral packages and coordinates with the OCFO, the SDO, and other interested NCUA parties. The SDO Admin also coordinates suspension and debarment actions with other agencies and enters ineligible contractors into SAM. The SDO Admin coordinates with the OIG, when necessary and appropriate.

5. Office of the Chief Financial Officer (OCFO). OCFO contracting officers shall evaluate the responsibility of prospective contractors before award, to include checking SAM. Contracting officers shall also ensure contractor compliance with contract terms and conditions and shall coordinate appropriately with any NCUA office and the SDO Admin on a suspension and debarment action.

6. Office of Inspector General (OIG). The OIG's work may form the basis for a referral for suspension or debarment. The OIG shall raise any matters of concern resulting from audits, evaluations and investigations. Other NCUA offices may refer areas of concern to the OIG for investigation.

7. All NCUA Offices. All NCUA offices must report misconduct that may give rise to a suspension and debarment action to the NCUA contracting officer and the SDO Admin upon any indication of a cause for suspending and debarring contractors. Situations that involve possible criminal or fraudulent activities must also be referred to the OIG. Along with more specific bases for debarments and suspensions listed in Section C, the following general matters may be grounds for suspension and debarment and should be referred: Contractor fraud, dishonesty, or unethical behavior; repeated or severe contract performance issues; unmitigated or undisclosed conflicts of interest; and improper invoicing and/or questionable costs.

*E. Effect of Listing* [15]

1. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and the FAR provides that agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines there is a compelling reason for such action. Subject to any exceptions in this policy, the NCUA shall not award new contracts, place orders exceeding the guaranteed minimum on indefinite delivery contracts, place orders under schedule contracts, add new work, exercise options, or extend the duration of a contract with any contractor debarred, suspended, or proposed for debarment. Except as otherwise provided in applicable law, a suspension and debarment action taken by the NCUA will exclude the contractor from all awards of other contracts within the Executive Branch.

a. Current contracts. Any NCUA decision to terminate or void a current contract shall be subject to review and concurrence by OGC.

b. Restrictions on subcontracting. When a contractor debarred, suspended or proposed for debarment is proposed as a subcontractor for any subcontract subject to NCUA consent, contracting officers shall not consent unless the Executive Director states in writing the compelling reasons to do so.[16]

*F. Procedures for Referring Matters to the SDO*

1. General. The referring office shall provide any and all facts and information giving rise to the possible suspension and debarment, including any available documentation to the SDO Admin. Conviction-based debarment matters should be referred within 10 working days of discovery and, to the extent practicable, all other matters should be referred within 30 calendar days. The referring office shall submit an ARM to the SDO Admin. The SDO Admin will coordinate the ARM with the SDO, the NCUA contracting officer and any other necessary party.

2. Contents of the ARM. The ARM must include the following information, if applicable:

a. Information on the contractor:

i. Identity of respondents (contractors/affiliates/business entities).

ii. Position(s) held by individuals within the business entity.

iii. Fictitious names or aliases.

iv. Current mailing addresses of named parties and/or last known business address.

v. Current telephone and fax numbers for named parties.

vi. Dun and Bradstreet identifier and/or the Commercial and Government Entity Code.

vii. SSN and/or birthdates of individuals.

viii. Listing of subsidiaries, affiliates, and parent companies.

b. Pertinent Documents.

i. NCUA-affected contract numbers and copies of the contract(s).

ii. Listing of any other contracts the entity has with other Government agencies.

iii. Invoices and other cost and pricing information.

iv. Any indictment, legal documents, sentencing transcripts or memoranda, any judgement and conviction, settlement agreement or final order.

v. Explanation of current business corporate structure, if known.

[15] The nonprocurement common rule is a model rule published in the **Federal Register** and used by agencies to suspend, debar, or exclude contractors from participation in nonprocurement activities. Nonprocurement activities include grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidiaries, insurance, payments for specified use, and donation agreements. FAR and NCR-based suspension and debarment actions are recognized equally by agencies regardless of which regulations they follow.

[16] Also, contractors shall not enter into any subcontract in excess of $35,000, other than a subcontract for a commercially available off the-shelf item, with a party that is debarred, suspended, or proposed for debarment.

vi. Any business-related documents (articles of incorporation).

vii. Emails and communication between the NCUA and the contractor.

c. Business activity of the contractor and nexus statement. The ARM must contain a narrative explaining the relationship between the conduct of the contractor and the NCUA's mission and/or activities and include a statement of the grounds for suspension and debarment. The narrative should focus on the contractor's integrity and present responsibility and why the NCUA needs protection. The narrative should show the SDO what happened in clear and concise terms. Mitigating factors that can be addressed are whether the individual(s) cooperated with any investigation, whether behavior was repetitive, and whether any individuals self-disclosed. Time critical events should be addressed (for example, whether the contractor is being considered for new award or an option is about to be exercised).

d. Recommended course of action. The ARM shall recommend a suspension, proposal for debarment, or show cause letter. The ARM can also propose a period for the suspension or debarment.

*G. Decision-Making Process*

a. Upon receipt of a referral, the SDO Admin will ensure that the file has all of the required elements. The SDO Admin will coordinate with the referring office, the OIG, the NCUA contracting officer and any other necessary party if more information is needed. The SDO Admin will coordinate any proposed action with the Interagency Suspension and Debarment Committee (ISDC). The ISDC is an organization composed of suspension and debarment representatives from agencies and coordinates lead agency status among agencies. The lead agency is usually the agency with the highest amount of contracting dollars with the vendor.

b. The SDO Admin will then forward the ARM to the SDO. Upon the receipt of a referral, the SDO will decide the appropriate action to take. After consultation with OGC, the SDO may take any of the following actions:

i. Reject the ARM and take no action. The SDO may determine there is not enough evidence to initiate an action. The SDO will document the decision not to take action and tell the SDO Admin. The SDO Admin will coordinate this decision within the NCUA. Continuous monitoring of the contractor may be recommended.

ii. Issue a Show Cause Letter. The SDO may issue a Show Cause Letter to the contractor rather than initiating a formal suspension or debarment action. The SDO Admin will send the Show Cause Letter to the contractor through USPS certified mail, return receipt requested, and forward a copy to the NCUA contracting officer and the OIG if necessary. The letter must include all of the following:

1. A description of the alleged misconduct.

2. Notice that the misconduct may form the basis for a suspension and debarment action.

3. A request for the contractor to admit, deny, or explain the alleged misconduct.

4. A time for a contractor to respond (no more than 30 calendar days from the date of receipt).

5. Notice of consequences for failure to respond to the letter or adequately address the allegations of misconduct.

iii. Issue a Notice of Suspension or Notice of Proposed Debarment. The SDO may begin formal proceedings by issuing a Notice of Suspension or a Notice of Proposed Debarment. Issuance of either, immediately renders the contractor (and any named affiliates) ineligible to receive Executive Branch contracts and the SDO Admin will enter the contractor's name into SAM. Notice shall be sent by USPS certified mail, return receipt requested to the last known address of the contractor.

1. Notice of Proposed Debarment. The notice shall inform the contractor (and any named affiliates):

a. That it is being considered for debarment;

b. of the reasons/causes for the proposed debarment;

c. of the effect of the proposed debarment;

d. of the potential effect of a debarment (including scope of ineligibility);

e. that the contractor has 30 calendar days from receipt of the notice to respond with its PMIO in person, in writing, or through a representative with information and arguments opposing the proposed debarment; and

f. that the NCUA may conduct a fact-finding proceeding.

A copy of the ARM will be sent with the notice. A copy of the entire Administrative Record will be made available to the contractor upon request, unless applicable law or parallel proceedings warrant the SDO's partial or complete redaction or withholding of the Administrative Record.

2. Notice of Suspension. The notice shall inform the contractor (and its affiliates) of the following circumstances:

a. That it has been suspended;

b. whether the suspension is based on indictment or other adequate evidence that the contractor has committed misconduct warranting immediate action;

c. that the suspension is for a temporary period, pending the completion of an investigation (if the suspension is based on indictment there is no time limit);

d. the cause(s) for imposing the suspension;

e. the effect of the suspension (including the scope of ineligibility);

f. that the contractor has 30 calendar days from receipt of the notice to respond with its PMIO in person, in writing, or through a representative with information and argument opposing the suspension; and

g. that the NCUA may conduct a fact-finding proceeding if the SDO finds that material facts are in dispute.

A copy of the ARM will be sent with the notice. A copy of the entire Administrative Record will be made available to the contractor upon request, unless applicable law or parallel proceedings warrant the SDO's partial or complete redaction or withholding of the Administrative Record.

iv. Contractor's PMIO. After receiving notice of a suspension or debarment, the contractor has 30 calendar days from receipt of the notice to respond with its PMIO in person, in writing, or through a representative with information and argument opposing the proposed suspension or debarment. There is no set format for how the PMIO must be submitted. The contractor may request a meeting with the SDO. The SDO will decide whether to transcribe meetings and conference calls on a case-by-case basis. The PMIO should raise all contractor defenses, contested facts, admissions, remedial actions taken and any mitigating factors. Mitigating factors can include explaining whether the contractor (a) has effective standards of internal control systems or adopted of such controls; (b) brought the misconduct to the attention of the NCUA in a timely manner; (c) internally investigated the misconduct; (d) cooperated fully with any NCUA investigation; (e) paid or agreed to pay restitution; (f) took appropriate disciplinary actions against individuals responsible for misconduct; (g) implemented or agreed to implement new remedial measures; (h) instituted or agreed to issue new training or ethics programs; (i) has had adequate time to eliminate the circumstances in the organization that led to the misconduct; and (j) whether management recognizes the seriousness of the misconduct and has implemented programs to prevent

recurrence. The SDO must consider all matters in the PMIO in rendering a final decision. A contractor's failure to respond to the notices sent by the SDO shall be deemed an admission of the existence of the cause for suspension or debarment. In that case, the SDO may proceed to a final decision without further proceedings.

A fact-finding proceeding occurs if actions are not based upon a conviction or civil judgement and when, after receipt of the PMIO, the SDO determines there is a genuine dispute over material fact(s). A fact-finding proceeding is called to consider the fact(s). A fact-finder can be any individual appointed by the SDO to oversee the proceeding. The contractor shall be afforded the opportunity to appear with counsel, submit documentary evidence and confront agency witnesses. The proceeding shall be transcribed unless otherwise mutually agreed upon, and the contractor can obtain a transcript of proceedings at its request and at its cost. The SDO shall attempt to schedule this proceeding within 60 calendar days of the PMIO. If there are numerous grounds for suspension and debarment, the proceeding can be limited to the grounds in dispute having a genuine issue of material fact. The disposition of the fact-finding proceeding will be documented by the SDO. The standard of proof for determining the disputed facts is preponderance of the evidence.

c. Compiling the Administrative Record. During the process, the NCUA shall maintain and document all information considered by the SDO to include the ARM, the PMIO (including mitigating factors) and transcripts of any fact-finding proceedings. This is the Administrative Record. The following records, in addition to any other similar materials, shall also be included if considered by the SDO: Emails; notes; contract documents; newspaper articles; and summaries of oral briefings and contractor submissions. Any information not relied on by the SDO should not be included. Once the SDO issues a final decision, the contractor may request a copy of the Administrative Record. The SDO may deny the request or withhold or redact part of the Administrative Record if warranted under applicable law or because of parallel proceedings.[17] In any circumstance where the SDO redacts or withholds all or part of the Administrative Record, the SDO will provide the reasons for doing so to the contractor in writing.

d. Final Decision. The SDO shall issue a written final decision based on the Administrative Record. The SDO shall issue a conviction-based debarment within 30 working days after closing the Administrative Record and within 45 working days of closing the Administrative Record for a fact-based suspension or debarment. The SDO has discretion to extend these deadlines. The Administrative Record will be deemed closed when the SDO Admin submits all evidence to the SDO for a final decision. The SDO Admin will advise the contractor in writing promptly after the Administrative Record has been closed, including the date it was closed. All correspondence shall be sent USPS certified mail, return receipt requested, by the SDO Admin. The SDO can take the following actions in a final decision:

i. Not Debar the Contractor. The SDO may decide not to debar the contractor. The decision shall include, if applicable, referral to the Notice of Proposed Debarment; a summary of proceedings; the identities of affiliates or imputed conduct; and the reasons for not debarring (for example, an Administrative Agreement; mitigating factors; or remedial measures taken by the contractor). The decision shall notify the contractor that it may request a copy of the Administrative Record and give notice of the applicability date of the decision. The SDO Admin will remove the contractor's name from SAM.

ii. Terminate the Suspension. The SDO may decide to terminate the suspension. The decision shall include, if applicable, referral to the Notice of Suspension; a summary of proceedings; the identities of affiliates or imputed conduct; and the reason for terminating the Suspension (for example, an Administrative Agreement; mitigating factors; or remedial measures taken by the contractor). The decision shall notify the contractor that it may request a copy of the Administrative Record and give notice of the applicability date of the decision. The SDO Admin will remove the contractor's name from SAM.

iii. Debar the Contractor. The SDO may decide to debar the contractor. This decision must be based on the preponderance of the evidence. The decision shall include, if applicable, referral to the Notice of Proposed Debarment; a summary of proceedings; identities of affiliates or imputed conduct; the information considered by the SDO; the reasons for debarring; the scope of ineligibility; the consequences of debarment (application across the Executive Branch); and the applicability dates of debarment. The decision shall notify the contractor that it may request a copy of the Administrative Record. The SDO Admin will enter the debarred contractor into SAM.

iv. Enter into an Administrative Agreement. At any time during the proceedings, the SDO may negotiate an Administrative Agreement with the contractor. An Administrative Agreement applies across the Executive Branch when entered into SAM. The terms of the Administrative Agreement and contents of the Agreement will be determined on a case-by-case basis.

e. Contractor's Remedy. After a decision is made, a suspended or debarred contractor may seek judicial review. OGC (in coordination with the Department of Justice, as appropriate or required) will work with the referring office, the SDO, and OCFO to litigate these claims.

*H. NCUA Action After a Decision*

If a suspension or debarment is imposed, NCUA offices must take steps to ensure the contractor does not receive any new contracts. Upon the applicability date of SAM listing, the NCUA must not solicit offers from, award contracts to, or consent to contracts with ineligible contractors. Suspended or debarred contractors may continue performing current contracts (unless those contracts are terminated or voided) but cannot (a) add new work, exercise options, or otherwise extend the duration of the contract or order; (b) issue task orders exceeding the guaranteed minimum under indefinite quantity contracts; or (c) place orders under blanket purchase agreements or basic ordering agreements. The NCUA must review any current contracts held by the contractor to determine whether to terminate or void those contracts. A decision to terminate or void a contract requires OGC concurrence.

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BILLING CODE 7535–01–P

[17] Parallel proceedings occur when two or more contemporaneous legal actions are initiated by different Government entities against the same contractor, and involving the same material facts. Often these arise when an agency has suspended or proposed a contractor for debarment and the Department of Justice is investigating or prosecuting the contractor for the same misconduct.

## NUCLEAR REGULATORY COMMISSION

### Meeting of the Advisory Committee on Reactor Safeguards (ACRS); Subcommittee on Thermal-Hydraulic Phenomena

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on August 21, 2018, at 11545

Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

**Tuesday, August 21, 2018–8:30 a.m. Until 5:00 p.m.**

The Subcommittee will conduct an information briefing regarding the potential use of Department of Energy computer codes in risk-informed safety analyses of accident tolerant fuel for light-water reactors, as well as non-light-water reactors. The Subcommittee will hear presentations by and hold discussions with Department of Energy personnel, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Weidong Wang (Telephone 301–415–6279 or Email: *Weidong.Wang@nrc.gov*) one day prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. The public bridgeline number for the meeting is 866–822–3032, passcode 8272423. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone 301–415–6702) to be escorted to the meeting room.

Dated: August 2, 2018.

**Mark L. Banks,**

*Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2018–17009 Filed 8–8–18; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 040–08903; NRC–2018–0153]**

## Homestake Mining Company of California; Grants Reclamation Project; Zeolite Water Treatment Systems

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; opportunity to request a hearing and to petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has received an application from the Homestake Mining Company of California (the licensee), for amendment of Materials License No. SUA–1471, which authorizes the possession of residual uranium and byproduct material in the form of uranium waste tailings and other byproduct waste generated by the licensee's past milling operations at the licensee's uranium mill located in Cibola County, New Mexico. The amendment would update Materials License No. SUA–1471 Condition 35 to include the 300 and 1200 gallon per minute (gpm) zeolite water treatment systems, which are currently being used by the licensee for site remediation efforts.

**DATES:** A request for a hearing or petition for leave to intervene must be filed by October 9, 2018.

**ADDRESSES:** Please refer to Docket ID NRC–2018–0153 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0153. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Whited, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4090, email: *Jeffrey.Whited@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The NRC has received, by letter dated December 11, 2017 (ADAMS Package Accession No. ML17361A006), as supplemented by letter dated February 22, 2018 (ADAMS Accession No. ML18066A583), an application to amend Materials License No. SUA–1471 for the licensee's uranium mill located in Cibola County, New Mexico. The license amendment included an Environmental Review. The licensee is currently working on groundwater restoration activities to mitigate the impacts of seepage from the unlined tailings impoundments into the underlying aquifer that has been ongoing since 1977. This application requests to amend License Condition 35 to include the 300 gpm and 1,200 gpm zeolite water treatment systems as a method to be used for groundwater remediation. The zeolite water treatment systems are single lined facilities located on top of the large tailings pile at the site. Since 2012, the licensee had been pilot testing the 300 gpm and 1,200 gpm zeolite water treatment systems prior to being requested they be added to the license. The zeolite system passes uranium contaminated groundwater through a

sequence of lined ponds that contain zeolite crystals, which absorb the dissolved uranium onto the zeolite crystals through an exchange process with other cations (*e.g.,* sodium, calcium, and hydrogen).

An NRC administrative completeness review found the application acceptable for a technical review (ADAMS Accession No. ML18117A242). Prior to approving the updated license, the NRC will need to make the findings required by the Atomic Energy Act of 1954 as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report, and the staff will conduct an environmental review pursuant to section 51.27 of title 10 of the *Code of Federal Regulations* (10 CFR), which may lead to the development of an environmental assessment.

## II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

## III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its

counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 3rd day of August 2018.

For the Nuclear Regulatory Commission.

**Stephen S. Koenick,**

*Chief, Materials Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2018–17037 Filed 8–8–18; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–025 and 52–026; NRC–2008–0252]**

## Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4 Ventilation System Changes

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption and combined license amendment; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is granting exemptions to allow a departure from elements of the certification information of Tier 1 of the generic AP1000 design control document (DCD) and issuing License Amendment Nos. 129 and 128 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

**DATES:** The exemptions and amendments were issued on June 28, 2018.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Jennifer Borges; 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical

questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was designated License Amendment Request (LAR) 16–030R1 and submitted by letter dated August 31, 2017, and supplemented by letters dated March 23, and May 18, 2018 (ADAMS Accession No. ML17243A444, ML18082B369 and ML18138A398, respectively).

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 129 and 128 to COLs Nos. NPF–91 and NPF–92, respectively, to the licensee. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee proposed changes to plant-specific Tier 1 and associated COL Appendix C information, as well as plant-specific Tier 2 materials located in the plant-specific Updated Final Safety Analysis Report, all of which are related to design details of the containment recirculation cooling system and the radiologically controlled area ventilation system.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12 and 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML18152B277.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COL Nos. NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML18152B269 and ML18152B270, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML18152B271 and ML18152B273, respectively. A summary of the amendment documents is provided in Section III of this document.

## II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated August 31, 2017, as supplemented by letters dated March 23, and May 18, 2018, Southern Nuclear Operating Company (SNC) requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request LAR 16–030R1, ''Ventilation System Changes.''

For the reasons set forth in Section 3.2 of the NRC staff's Safety Evaluation, which can be found at ADAMS Accession No. ML18152B277 the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SNC is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License, as described in the licensee's request dated August 31, 2017, as supplemented by letters dated March 23, and May 18, 2018. This exemption is related to, and necessary for the granting of License Amendment No. 129 (Units 3) and No. 128 (Unit 4), which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession Number ML18152B277), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

## III. License Amendment Request

By letter dated August 31, 2017, as supplemented by letters dated March 23, and May 18, 2018 (ADAMS Accession Nos. ML17243A444, ML18082B369 and ML18138A398, respectively), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COL Nos. NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on October 24, 2017 (82 FR 49234). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

## IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemptions and issued the amendments that the licensee requested on August 31, 2017, and supplemented by letters dated March 23, and May 18, 2018 (ADAMS Accession No. ML17243A444, ML18082B369 and ML18138A398, respectively).

The exemption and amendment were issued to the licensee on June 28, 2018, as part of a combined package (ADAMS Accession No. ML18152B267).

Dated at Rockville, Maryland, this 3rd day of August 2018.

For the Nuclear Regulatory Commission.

**Jennifer L. Dixon-Herrity,**

*Chief, Licensing Branch 4, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.*

[FR Doc. 2018–16996 Filed 8–8–18; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 52–025 and 52–026; NRC–2008–0252]**

## Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Tier 1 and Tier 2* Editorial and Consistency Changes

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption and combined license amendment; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic AP1000 design control document (DCD) and is issuing License Amendment Nos. 125 and 124 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

**DATES:** The exemption and amendment were issued on May 31, 2018.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Jennifer Borges; 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letters dated November 30, 2017, and March 16, 2018, and are available in ADAMS under Accession Nos. ML17334B211 and ML18075A438.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Peter Hearn, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1189; email: *Peter.Hearn@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 125 and 124 to COL Nos. NPF–91 and NPF–92, respectively, to the licensee. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes to plant-specific DCD Tier 2 and Tier 2* information and related changes to plant-specific Tier 1 information, with corresponding changes to Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) in COL Appendix C. Specifically the changes corrected various editorial and consistency issues between Tier 1 and Tier 2 in Tier 1 text, tables and figures.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML18106A638.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML18106A629 and ML18106A631, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML18106A632 and ML18106A635, respectively. A summary of the amendment documents is provided in Section III of this document.

## II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated November 30, 2017, as supplemented by the letter

dated March 16, 2018, the Southern Nuclear Operating Company (SNC) requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request 17–042, ''Tier 1 and Tier 2* Editorial and Consistency Changes.''

For the reasons set forth in Section 3.2 of the NRC staff's Safety Evaluation that which can be found in ADAMS under Accession No. ML18106A638), the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to appendix C of the Facility Combined License, as described in the licensee's request dated November 30, 2017, as supplemented by the letter dated March 16, 2018. This exemption is related to, and necessary for, the granting of License Amendment No. 125 [for Unit 3 and No. 124 for Unit 4], which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML18106A638), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

## III. License Amendment Request

By letter dated November 30, 2017 (ADAMS Accession No. ML17334B211), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this document.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on March 30, 2018 (83 FR 13796). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

## IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on November 30, 2017.

The exemption and amendment were issued on May 31, 2018, as part of a combined package to the licensee (ADAMS Accession No. ML18106A626).

Dated at Rockville, Maryland, this 3rd day of August 2018.

For the Nuclear Regulatory Commission.

**Jennifer L. Dixon-Herrity,**

*Chief, Licensing Branch 4, Division of Licensing, Siting, and Environmental Analysis Office of New Reactors.*

[FR Doc. 2018–16995 Filed 8–8–18; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[NRC–2018–0066]**

## Dry Storage and Transportation of High Burnup Spent Nuclear Fuel

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft NUREG; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG, NUREG–2224, ''Dry Storage and Transportation of High Burnup Spent Nuclear Fuel.'' The draft NUREG provides technical background information applicable to high burnup spent nuclear fuel (HBU SNF), provides an engineering assessment of recent NRC-sponsored mechanical testing of HBU SNF, and proposes example approaches for licensing and certification of HBU SNF in transportation and dry storage.

**DATES:** Submit comments on the draft NUREG–2224 by September 24, 2018. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0066. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Wendy Reed, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7213; email: *Wendy.Reed@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2018–0066 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0066.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–

415–4737, or by email to *pdr.resource@nrc.gov.* Draft NUREG–2224, ''Dry Storage and Transportation of High Burnup Spent Nuclear Fuel,'' is available in ADAMS under Accession No. ML18214A132

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2018–0066 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

**II. Discussion**

Historically, the potential for changes in the cladding performance of HBU SNF to compromise the analyzed fuel configuration in transportation packages and dry storage systems has been addressed through safety review guidance (Interim Staff Guidance (ISG)—11, Revision 3, ''Cladding Considerations for the Transportation and Storage of Spent Fuel'' (ADAMS Accession No. ML033230335); NUREG–1536, Revision 1, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility'' (ADAMS Accession No. ML101040620)). Time-dependent changes on the cladding performance of HBU SNF are primarily driven by the fuel's temperature, rod internal pressure (and corresponding pressure-induced cladding hoop stresses), and the environment during dry storage or transport operations. ISG–11, Revision 3 and NUREG–1536, Revision 1 defines adequate fuel conditions, including peak cladding temperatures during short-term loading operations to prevent and mitigate degradation of the cladding.

Draft NUREG–2224, ''Dry Storage and Transportation of High Burnup Spent Nuclear Fuel,'' (ADAMS Accession No. ML18214A132) is a technical basis document which expands on the aspects of ISG–11, Rev. 3 and NUREG–1536, Rev. 1 that pertain to hydride reorientation in HBU SNF cladding. Hydride reorientation is a process in which the orientation of hydrides precipitated in HBU SNF cladding during reactor operation changes from the circumferential-axial to the radial-axial direction. Draft NUREG–2224 provides an engineering assessment of the results of NRC-sponsored research (NUREG/CR–7198, Rev. 1, ''Mechanical Fatigue Testing of High-Burnup Fuel for Transportation Application,'' ADAMS Accession No. ML17292B057) on the mechanical performance of HBU SNF following hydride reorientation; and per the conclusions of that assessment, presents example approaches for licensing and certification of HBU SNF for transportation (under part 71of title 10 of the *Code of Federal Regulations* (10 CFR), ''Packaging and Transportation of Radioactive Material'') and dry storage (under 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste'').

The staff will review and consider public comments received on draft NUREG–2224 as it finalizes the guidance. The NRC is particularly seeking public comment on the following:

1. Are NRC's assumptions regarding the performance of other cladding alloys based on data obtained from HBU SNF with Zircaloy-4 cladding for evaluating design basis drop accidents reasonable? If not, please explain why not.

2. Are the described licensing and certification approaches easy to follow and practical? If not, please explain why not.

3. Is the proposed approach for evaluation of vibration normally incident to transport clear? If not, please explain why not.

4. Are the discussions on consequence analyses due to hypothetical fuel reconfiguration clear and meaningful? If not, please explain why not.

5. Are there any potential conflicts between NUREG–2215, Standard Review Plan for Spent Fuel Dry Storage Systems and Facilities, Draft for Comment (ADAMS Accession No. ML17310A693) and this document? If so, please describe any conflicts.

6. Is the NRC's reassessment of the ductility transition temperature as measured by ring compression testing of defueled HBU SNF specimens reasonable? If not, please explain why not.

In answering the questions, please fully explain your answers. In addition, comments are invited on any areas of the draft report.

**III. Public Meeting**

The NRC will conduct a public meeting for the purpose of describing the draft NUREG and answering questions from the public. The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting website at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Dated at Rockville, Maryland, this 3rd day of August 2018.

For the Nuclear Regulatory Commission.

**Michael C. Layton,**

*Director, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2018–16994 Filed 8–8–18; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 040–08903; NRC–2018–0154]**

## Homestake Mining Company of California; Grants Reclamation Project; Groundwater Monitoring Plan

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; opportunity to request a hearing and to petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has received an application from the Homestake Mining Company of California (the licensee), for amendment of Materials License No. SUA–1471, which authorizes the possession of residual uranium and byproduct material in the form of uranium waste tailings and other byproduct waste generated by the licensee's past milling operations at the licensee's uranium mill located in Cibola County, New Mexico. The amendment would update the groundwater monitoring plan to adjust the compliance monitoring for the groundwater restoration areas at the Grants Reclamation Project site. This change to the groundwater monitoring plan should ensure that coverage is

provided for all of the restoration areas at the site.

**DATES:** A request for a hearing or petition for leave to intervene must be filed by October 9, 2018.

**ADDRESSES:** Please refer to Docket ID NRC–2018–0154 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website: Go to http://www.regulations.gov* and search for Docket ID NRC–2018–0154. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Whited, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4090, email: *Jeffrey.Whited@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The NRC has received, by letter dated November 20, 2017 (ADAMS Accession No. ML18018A102), an application to amend Materials License No. SUA–1471 for the licensee's uranium mill located in Cibola County, New Mexico. In this application the licensee proposes to update the groundwater monitoring plan to adjust the compliance monitoring for the groundwater restoration areas at the Grants Reclamation Project (Grants) site. This update to the groundwater monitoring plan includes adding wells to those listed in License Condition 35A that will be monitored on specific frequencies as listed in the application. The amendment includes the location and aquifer termination for each well and details the constituents that will be monitored. The monitoring wells will be used to demonstrate groundwater restoration at the Grants site relative to the site standards listed in License Condition 35B. Three groundwater restoration areas have been defined for the Grants site: The on-site area, and the north and south off-site areas. The wells proposed to be added to the groundwater restoration program have already been installed and are currently being sampled. Additionally, some wells will no longer be monitored in instances where access is restricted by current property owners.

An NRC administrative completeness review found the application acceptable for a technical review (ADAMS Accession No. ML18117A218). Prior to approving the updated license, the NRC will need to make the findings required by the Atomic Energy Act of 1954 as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report, and the staff will conduct an environmental review pursuant to section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR).

## II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition

should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

**III. Electronic Submissions (E-Filing)**

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would

constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 3rd day of August 2018.

For the Nuclear Regulatory Commission.

**Stephen S. Koenick,**

*Chief, Materials Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2018–17039 Filed 8–8–18; 8:45 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Submission of Information Collection for OMB Review; Comment Request; Locating and Paying Participants

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, with modifications, to a collection of information under the Paperwork Reduction Act. The purpose of the information collection is to enable PBGC to pay benefits to participants and beneficiaries. This notice informs the public of PBGC's request and solicits public comment on the collection.

**DATES:** Comments must be submitted by September 10, 2018.

**ADDRESSES:** Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974.

A copy of the request will be posted on PBGC's website at *https://www.pbgc.gov/prac/laws-and-regulations/information-collections-under-omb-review.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel, 1200 K Street NW, Washington, DC 20005–4026, faxing a request to 202–326–4042, or calling 202–326–4040 during normal business hours (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040). The Disclosure Division will email, fax, or mail the information to you, as you request.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Cibinic (*cibinc.stephanie@pbgc.gov*), Deputy Assistant General Counsel, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 202 326–4400, extension 6352. TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400.

**SUPPLEMENTARY INFORMATION:** This information collection is needed to pay participants and beneficiaries who may be entitled to pension benefits from plans that have terminated. It consists of information participants and beneficiaries are asked to provide in connection with an application for benefits. In addition, in some instances, PBGC requests individuals to provide identifying information so that it may determine whether the individuals may be entitled to benefits. All requested information is needed so that PBGC may determine benefit entitlements and make appropriate payments.

This information collection includes My Pension Benefit Account (MyPBA), an application on PBGC's website, *http://www.pbgc.gov,* through which plan participants and beneficiaries may conduct electronic transactions with PBGC, including applying for pension benefits, designating a beneficiary, electing monthly payments, electing to withhold income tax from periodic payments, changing contact information, and applying for electronic direct deposit.

PBGC is proposing to revise one form in this collection, the Power of Attorney Form (Form 715). The proposed revision would include:

- Features previously unavailable—granting a durable power of attorney (DPOA) in addition to a nondurable power of attorney (NDPOA), and allowing a principal to name up to three agents to act on her behalf with PBGC (and to designate whether the agents have independent or joint authority), whereas the current form only has room for one agent to be named;
- Features that would protect the principal—heightened requirements for granting authority and for executing the document (*i.e.,* the principal's signature must be witnessed and notarized, and witnesses must meet certain criteria); and
- A ''Notice to the Principal,'' to alert the principal about what powers she is granting to a designated agent, and an ''Agent's Acknowledgement'' to inform the agent about her duties and liabilities with respect to handling the principal's affairs.

PBGC believes these revisions provide greater flexibility and greater protections against fraud for customers using the Form 715. Customers are not required to use this form and can use other DPOAs or NDPOAs that comply with applicable state laws.

The existing collection of information was approved under OMB control number 1212–0055 (expires March 31, 2019). On May 16, 2018, PBGC published in the **Federal Register** (at 83 FR 22715) a notice informing the public of its intent to request an extension of this collection of information, as modified. No comments were received. PBGC is requesting that OMB extend approval of the collection (with modifications to the Form 715) for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that it will receive 175,397 benefit applications and information forms annually. The total annual burden associated with this collection of information is estimated to be 108,440 hours (approximately one hour for benefit applications and 30 minutes for information forms) and an estimated $56,711, which is the total average maximum cost of notary services for spousal consents on benefit applications and for the Form 715. PBGC estimates that 710 out of the 175,397 applications and forms submitted annually are Form 715, and that the total annual burden to complete the Form 715 would be approximately 355 hours and $2,485.

Issued in Washington, DC.

**Stephanie Cibinic,**

*Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.*

[FR Doc. 2018–17019 Filed 8–8–18; 8:45 am]

**BILLING CODE 7709–02–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2018–203 and CP2018–282]**

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* August 13, 2018.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

## Table of Contents

I. Introduction
II. Docketed Proceeding(s)

## I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

## II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2018–203 and CP2018–282; *Filing Title:* USPS Request to Add Priority Mail Contract 459 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 3, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Christopher C. Mohr, *Comments Due:* August 13, 2018.

This Notice will be published in the **Federal Register**.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2018–17035 Filed 8–8–18; 8:45 am]

**BILLING CODE 7710–FW–P**

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# POSTAL SERVICE

## Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* August 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 3, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 459 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–203, CP2018–282.

**Elizabeth Reed,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2018–17018 Filed 8–8–18; 8:45 am]

**BILLING CODE 7710–12–P**

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# SECURITIES AND EXCHANGE COMMISSION

## Submission for OMB Review; Comment Request

*Upon Written Request*, Copy Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*

Rule 12b–1, SEC File No. 270–188, OMB Control No. 3235–0212

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 12b–1 under the Investment Company Act of 1940 (17 CFR 270.12b–1) permits a registered open-end investment company (''fund'') to bear expenses associated with the distribution of its shares, provided that the fund complies with certain requirements, including, among other things, that it adopt a written plan (''rule 12b–1 plan'') and that it preserves in writing any agreements relating to the rule 12b–1 plan. The rule in part requires that (i) the adoption or material amendment of a rule 12b–1 plan be approved by the fund's directors, including its independent directors, and, in certain circumstances, its shareholders; (ii) the board review quarterly reports of amounts spent under the rule 12b–1 plan; and (iii) the board, including the independent directors, consider continuation of the rule 12b–1 plan and any related agreements at least annually. Rule 12b–1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b–1 plan and any related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b–1 plan.

Rule 12b–1 also prohibits funds from paying for distribution of fund shares with brokerage commissions on their portfolio transactions. The rule requires funds that use broker-dealers that sell their shares to also execute their portfolio securities transactions, to implement policies and procedures reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking into account broker-dealers' promotional or sales efforts when making those decisions; and (ii) a fund, its adviser, or its principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's (or any other fund's) shares.

The board and shareholder approval requirements of rule 12b–1 are designed

to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b–1 plan and, thus, are necessary for investor protection. The requirement of quarterly reporting to the board is designed to ensure that the rule 12b–1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule. The requirement that funds or their advisers implement, and fund boards approve, policies and procedures in order to prevent persons charged with allocating fund brokerage from taking distribution efforts into account is designed to ensure that funds' selection of brokers to effect portfolio securities transactions is not influenced by considerations about the sale of fund shares.

Commission staff estimates that there are approximately 7,858 fund portfolios that have at least one share class subject to a rule 12b–1 plan and approximately 323 fund families with common boards of directors that have at least one fund with a 12b–1 plan. The Commission further estimates that the annual hour burden for complying with the rule is 425 hours for each fund family with a portfolio that has a rule 12b–1 plan. We therefore estimate that the total hourly burden per year for all funds to comply with current information collection requirements under rule 12b–1 is 137,275 hours. Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b–1 plan. The staff further estimates that the cost of each fund's proxy is $34,849. Thus, the total annual cost burden of rule 12b–1 to the fund industry is $104,547.

Estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collections of information required by Rule 12b–1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: August 3, 2018.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–16998 Filed 8–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83774; File No. SR–NSCC–2018–005]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide for the Delivery of Certain Transaction Data Relating to Variable Annuity and Variable Life Insurance Subaccounts and Implement Fees Associated With This Proposed Feature

August 3, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 26, 2018, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and subparagraphs (f)(2)[4] and (f)(4)[5] of Rule 19b–4 thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to NSCC's Rules & Procedures (''Rules'') in order to reflect proposed enhancements to NSCC's Insurance and Retirement Processing Services (''I&RS''). The proposed rule change would enhance existing I&RS services to provide for the delivery of certain transaction data relating to variable annuity and variable life insurance subaccounts (''variable product subaccounts'') and implement fees associated with this proposed feature, as described in greater detail below.[6]

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change consists of modifications to the Rules in order to reflect proposed enhancements to I&RS services. The proposed rule change would enhance existing I&RS services to provide for the delivery of certain transaction data relating to variable product subaccounts and implement fees associated with this proposed feature, as described in greater detail below.

(i) Variable Product Subaccounts

An annuity is a contract between a holder and an insurance carrier pursuant to which the holder makes an upfront payment to an insurance carrier and the insurance carrier agrees to pay the holder periodic payments at a future date. A variable annuity is a type of annuity that allows the holder to choose from a selection of investment options, or ''subaccounts,'' within the annuity and the periodic payments paid by the insurance carrier are determined, in part, by the performance of the subaccounts selected by the holder. A variable life insurance contract operates in a similar manner. The variable life insurance carries a ''cash value'' and the purchaser can choose from a selection of investment subaccounts to invest the cash value. The subaccounts for variable

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 17 CFR 240.19b–4(f)(4).

[6] Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in, available at *http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

products are frequently structured to be similar to mutual funds and are managed by mutual fund asset managers.

Historically asset managers have received certain information relating to the affiliated subaccounts they manage on an aggregate basis from insurance carriers rather than on an individual transactional basis with respect to each subaccount. For instance, an insurance carrier will send settlement amounts to the asset manager reflecting the aggregate amounts invested in each subaccount at any given time but will not send any individual transactional data relating to how those amounts were invested in each subaccount. As an example, if two clients each invested in a subaccount in one day and another client transfers funds from the subaccount on the same day, the insurance carrier would provide the asset manager the aggregate amount of funds remaining in the subaccount at the end of the day and will not specify that two of its clients invested in the subaccount and one client removed funds from the subaccount or any details relating to the individual transactions.

Asset managers would like access to the information specific to the individual transactions for the subaccounts that they manage to get a better understanding of the business of the subaccounts. The subaccount transaction-specific information that the asset managers would like to receive with respect to each subaccount transaction includes the name of the insurance carrier, the date of the transaction, the broker-dealer named on the transaction, the individual advisor listed on the transaction, the type of transaction (*e.g.,* new purchase, death claim, rebalance, subaccount transfer to or from the subaccount, etc.) and the amount of the transaction. Asset managers get this information, as applicable, with respect to retail mutual funds that they manage and such information is useful to indicate the investment advisors that are working with clients purchasing their subaccounts, activities between mutual funds that they manage such as transfers by clients between mutual funds that they manage, individual transaction amounts and the reason funds are being moved from or to a particular account. Such information provides asset managers with a better understanding of the accounts that they manage and the reason that clients are investing within certain products. This understanding allows asset managers to better serve clients by providing products to address their requirements. Asset managers have indicated that such transaction-specific information does not need to include individual client information with respect to the transactions, such as the identity of the underlying clients.

This daily subaccount transactional information is currently included within the file that insurance carriers send to distributors as part of the I&RS Financial Activity Reporting (''FAR'') service.[7] FAR enables insurance carriers to provide distributors with daily individual and group annuity and life insurance financial transaction information, including information relating to subaccounts. Distributors use this information, including the subaccount transactional information, to manage their client's accounts.

NSCC is proposing to take the transaction-specific subaccount data that it receives within the FAR files and make it available to asset managers that sign up for the feature. In connection with sending the transaction-specific subaccount data, NSCC may send the data to third party service providers who have been engaged by the asset managers to take the data from NSCC and organize it on behalf of the asset managers and/or provide a central repository pursuant to which asset managers may retrieve such information from NSCC. NSCC may enter into a contract with such service providers to ensure among other things that the data is being used as contemplated by the Rules and that there are proper safeguards to ensure data security.

NSCC is proposing to charge the asset managers that sign up for the feature and gain access to the subaccount data a monthly fee of $2,500. Asset managers that are not Members or Limited Members would also be required to enter into an agreement relating to the payment of the fees and such other conditions as determined by NSCC to gain access to the subaccount data, including system requirements.

(ii) Proposed Rule Changes

The proposed rule change would amend Rule 57 to provide that NSCC would make available transaction-specific subaccount data to asset managers and service providers engaged by them to process the applicable data. The proposed rule change would also provide that asset managers which are not Members or Limited Members would be required to enter into such agreements with the NSCC as determined by NSCC to gain access to the subaccount data which agreements would include an agreement to pay the fees set forth in in the Rules to access the data and to set up any system requirements necessary to access the data. The proposed rule change would also provide that service providers receiving the subaccount data on behalf of asset managers would also be required to enter into such agreements as determined by the Corporation in order to gain access to such subaccount data on behalf of such asset managers to ensure the data is being sent to asset managers as contemplated in the Rules and that there are proper safeguards by the service provider to ensure data security

In addition, NSCC would amend Addendum A of the NSCC Rules to include the fees for subscription for the subaccount data feature.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act[8] requires, in part, that the Rules be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The proposed rule change would enhance insurance carriers' ability to send, and asset managers' ability to access and retrieve, daily transaction-specific subaccount data relating to the assets and funds that such asset managers manage that are within variable annuities and variable life insurance contracts. Currently, there is not a structured method of providing transaction-specific subaccount information to asset managers, and insurance carriers historically have not consistently provided such information to asset managers. The proposed rule change would allow the transaction-specific subaccount information to be shared by insurance carriers with asset managers in a standardized format. As such, NSCC believes that the proposed rule change would foster cooperation and coordination among persons engaged in the clearance and settlement of securities, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[9]

Section 17A(b)(3)(D) of the Act[10] requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes that the proposed rule change to Addendum A is consistent with this provision of the Act because the proposed fees would

[7] Section 8 of Rule 57, *supra* note 6. FAR enables Insurance Carrier/Retirement Services Members to transmit IPS Data regarding financial transactions and related activity specific to an IPS Eligible Product to Members, Mutual Fund/Insurance Services Members and Data Services Only Members. *Id.*

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] *Id.*

[10] 15 U.S.C. 78q–1(b)(3)(D).

align with the cost of delivering the proposed subaccount data feature, and such fees would be allocated equitably among the entities that subscribe for access to the subaccount data. Specifically, the costs to NSCC for providing the feature would include building the capability to separate the subaccount data from the FAR files sent by insurance carriers, segregating such data by asset manager, drafting and negotiating agreements with asset managers relating to receiving the data and drafting and negotiating agreements with service providers who are receiving and distributing subaccount data on behalf of asset managers. NSCC believes that the costs for adding and operating the feature on behalf of asset managers would be approximately equal to the fees anticipated to be received by NSCC from the asset managers for use of this feature. In addition, such fees would be charged only to those asset managers that choose to subscribe to the feature. Therefore, by establishing fees that align with the cost of delivery of this feature and allocating those fees equitably among the subscribing asset managers, the proposed rule change would provide for the equitable allocation of reasonable dues, fees and other charges among its participants consistent with the requirements of Section 17A(b)(3)(D) of the Act.[11]

*(B) Clearing Agency's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change would have any adverse impact, or impose any burden, on competition because the proposed rule change would add an optional feature to NSCC's services that would provide access by asset managers to transaction-specific subaccount data that is included within the FAR files. As an optional feature available for subscription, the proposed rule change would not disproportionally impact any NSCC participants.

Moreover, because the proposed rule change would allow asset managers to receive transaction-specific subaccount data and use that information to better service the funds and assets within variable products, NSCC believes the proposed rule change would have a positive effect on competition among asset managers. The proposed feature would provide these firms with a method of receiving transaction-specific subaccount data similar to the information that such asset managers currently receive with respect to retail mutual funds. Receiving transaction-specific subaccount information with respect to variable products would provide asset managers a better understanding of client requirements and allow asset managers to adjust their products so that they are better suited for clients of variable annuities and variable life insurance contracts. NSCC believes this would enhance competition among asset managers by enabling each to more quickly provide competing products meeting client requirements.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

**III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraphs (f)(2)[13] and (f)(4)[14] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2018–005 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2018–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2018–005 and should be submitted on or before August 30, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–17007 Filed 8–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

[11] *Id.*

[12] 15 U.S.C 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 240.19b–4(f)(4).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request*, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*

Form ADV–E, SEC File No. 270–318, OMB Control No. 3235–0361

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the

''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form ADV–E (17 CFR 279.8) is the cover sheet for certificates of accounting filed pursuant to rule 206(4)–2 under the Investment Advisers Act of 1940 (17 CFR 275.206(4)–2). The rule further requires that the public accountant file with the Commission a Form ADV–E and accompanying statement within four business days of the resignation, dismissal, removal or other termination of its engagement.

The Commission has estimated that compliance with the requirement to complete Form ADV–E imposes a total burden of approximately 0.05 hours (3 minutes) per respondent. Based on current information from advisers registered with the Commission, the Commission staff estimates that 1,749 filings will be submitted with respect to surprise examinations and 38 filings will be submitted with respect to termination of accountants. Based on these estimates, the total estimated annual burden would be 89.35 hours ((1,749 filings × .05 hours) + (38 filings × .05 hours)).

The information provided on Form ADV–E is mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: August 3, 2018.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–16999 Filed 8–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83770; File No. SR–BX–2018–035]**

## Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Options Rules at Chapter I, Section 1 To Define Certain Terms

August 3, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 23, 2018, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Options Rules at Chapter I, Section 1 to define certain terms.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

BX rules currently do not define an ''in-the-money'' or ''out-of-the-money'' option. The Exchange proposes to define these terms at Chapter I, Section 1 to bring greater transparency to BX rules. In addition, the Exchange notes that the terms, ''in-the-money'' and ''out-of-the-money'' are generally accepted terms in the options industry. These terms are utilized throughout the options industry. The Exchange desires for its Participants to have a clear understanding of how BXs System defines these terms.

The Exchange proposes to define an ''in-of-the-money'' option at Chapter I, Section 1(a)(68). The Exchange proposes that the term ''in-the-money'' shall mean the following: For call options, all strike prices below the offer in the underlying security on the primary listing market; for put options, all strike prices above the bid in the underlying security on the primary listing market. The Exchange proposes to define an ''out-of-the-money'' option at Chapter I, Section 1(a)(69). The Exchange proposes that the term ''out-of-the-money'' shall mean the following: For call options, all strike prices above the offer in the underlying security on the primary listing market; for put options, all strike prices below the bid in the underlying security on the primary listing market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange's proposal to define the terms ''in-the-money'' and ''out-of-the-money'' options is consistent with the Act and protects investors and the public interest by bringing greater transparency to the Rulebook. In addition, the Exchange notes that the terms, ''in-the-money'' and ''out-of-the-money'' are generally accepted terms in the options industry. These terms are utilized throughout the options industry. The Exchange desires for its Participants to have a clear understanding of how BX's System defines these terms.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

Exchange's proposal to define the terms ''in-the-money'' and ''out-of-the-money'' options does not unduly burden competition, rather it adds greater transparency to the Rulebook.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6]

A proposed rule change filed under Rule 19b–4(f)(6) [7] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[8] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that immediately defining the terms ''in-the-money'' and ''out-of-the-money'' options within its Rulebook would provide greater transparency to its Participants. For the same reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2018–035 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2018–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2018–035 and should be submitted on or before August 30, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–17005 Filed 8–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request*, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*

Rule 206(4)–3, SEC File No. 270–218, OMB Control No. 3235–0242

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information discussed below.

Rule 206(4)–3 (17 CFR 275.206(4)–3) under the Investment Advisers Act of 1940, which is entitled ''Cash Payments for Client Solicitations,'' provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized advisory services to the prospective client, the solicitor must, at the time of the solicitation or referral, indicate to the prospective client that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized advisory services to the prospective client, the solicitor must, at the time of the solicitation or referral, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)–3. Amendments to rule 206(4)–3, adopted

in 2010 in connection with rule 206(4)–5, specify that solicitation activities involving a government entity, as defined in rule 206(4)–5, are subject to the additional limitations of rule 206(4)–5. The information rule 206(4)–3 requires is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so the prospective clients may consider the solicitor's potential bias, and to protect clients against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)–3 is applicable to all Commission registered investment advisers. The Commission believes that approximately 4,395 of these advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year per adviser and results in a total of approximately 30,941 total burden hours (7.04 × 4,395) for all advisers.

The disclosure requirements of rule 206(4)–3 do not require recordkeeping or record retention. The collections of information requirements under the rules are mandatory. Information subject to the disclosure requirements of rule 206(4)–3 is not submitted to the Commission. The disclosures pursuant to the rule are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: August 3, 2018.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–17000 Filed 8–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83775; File No. SR–CboeBZX–2018–018]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Principal Morley Short Duration Index ETF Under Rule 14.11(c)(4)

August 3, 2018.

### I. Introduction

On April 23, 2018, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Principal Morley Short Duration Index ETF (''Fund''). The proposed rule change was published for comment in the **Federal Register** on May 8, 2018.[3] On June 20, 2018, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] The Commission has received no comment letters on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.

### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares pursuant to BZX Rule 14.11(c)(4), which governs the listing and trading of index fund shares based on fixed income securities indexes. The Fund would seek to provide investment results that replicate, before expenses, the performance of The ICE BofA Merrill Lynch Low Duration U.S. ABS & CMBS Equal Par Index (''Index'').[6]

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83152 (May 2, 2018), 83 FR 20892.

[4] *See* Securities Exchange Act Release No. 83479, 83 FR 29838 (June 26, 2018). The Commission designated August 6, 2018 as the date by which the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

[5] 15 U.S.C. 78s(b)(2)(B).

[6] The Index value, calculated and disseminated at least once daily, as well as the components of the Index and their percentage weighting, will be available from major market data vendors.

*A. The Exchange's Description of the Index*

The Index is designed to provide exposure to investment-grade securitized products issued in the U.S., including ABS [7] and CMBS.[8]

To qualify for inclusion in the Index, eligible securities must be a component of The ICE BofA Merrill Lynch US ABS & CMBS Index (''Feeder Index''). Such securities are then selected and weighted based upon the Index methodology discussed below.

1. The Feeder Index's Methodology

In order to be included in the Feeder Index, a security (whether ABS or CMBS) must meet the following criteria (''Basic Criteria''):

- Be rated investment-grade (based on an average of Moody's, S&P Global, and Fitch);
- have a term of at least one year remaining until final stated maturity; and have at least one month to the last expected cash flow; and
- inverse floating rate, interest only, and principal only securities are excluded.

In addition to the Basic Criteria, an ABS must meet the following criteria:

- Must issue a fixed or floating rate coupon;
- must have an original deal size for the collateral group [9] of at least $250 million;
- must have a current outstanding deal size for the collateral group greater than or equal to 10% of the original deal size; and
- a minimum current outstanding tranche size of $50 million for senior tranches and $10 million current amount outstanding for mezzanine and subordinated tranches.

In addition to the Basic Criteria, a CMBS (which may include U.S. agency CMBS) must also meet the following criteria:

- Must issue a fixed coupon schedule;
- must have an original deal size for the collateral group of at least $250 million;
- must have a current outstanding deal size for the collateral group that is greater than or equal to 10% of the original deal size; and

[7] ''ABS'' means fixed and floating rate debt securities secured by non-mortgage assets.

[8] ''CMBS'' means fixed rate debt securities secured by first mortgages on commercial real estate.

[9] A collateral group describes the assets (receivables) that are held by the special purpose vehicle (''SPV'') issuing the ABS securities. The collateral group provides the source of payment for the SPV's liabilities (*i.e.,* ABS securities). Typically, an SPV will include assets greater than its liabilities as a form of credit enhancement.

• must have a minimum outstanding tranche size of $50 million for senior tranches and $10 million for mezzanine and subordinated tranches.

2. The Index's Methodology

Securities in the Feeder Index are screened for inclusion/exclusion in the Index based on the following criteria:

• ABS related to home equity and manufactured housing are excluded;

• CMBS securities that are rated less than AAA credit quality (based on an average of Moody's, S&P Global and Fitch) are excluded;

• CMBS securities that are issued prior to December 31, 2010 are excluded; and

• Securities must have a modified duration to worst that is less than or equal to 5 years for initial inclusion in the Index, although once included, the security remains in the Index provided the remaining criteria are met.

The qualifying securities are assigned equal par amounts with a 70% allocation given to ABS securities and a 30% allocation given to CMBS securities. The Index rebalances on a monthly basis.

*B. The Exchange's Description of the Fund*

Under Normal Market Conditions,[10] the Fund will invest at least 80% of its net assets, plus any borrowings for investment purposes, in ABS and CMBS that compose the Index at the time of purchase.

While the Fund normally will invest at least 80% of its net assets, plus any borrowings for investment purposes, in ABS and CMBS that compose the Index, as described above, the Fund may invest its remaining assets in securities not included in the Index including only the following instruments: ABS and CMBS not included in the Index; cash and cash equivalents; [11] Treasury Securities with a maturity of three months or greater; centrally cleared, index-based credit default swaps; [12] and, to the extent permitted by the 1940 Act, other exchange-traded funds (''ETFs'').[13]

The portfolio of securities held by the Fund will be disclosed on the Fund's website at *www.PrincipalETFs.com.*

*C. Exchange's Policy Discussion*

The Exchange believes that while the proposed rule change does not satisfy all of the ''generic'' listing requirements of Rule 14.11(c)(4), in particular Rules 14.11(c)(4)(B)(i)(b) [14] and 14.11(c)(4)(B)(i)(f),[15] the policy issues that such provisions are intended to address are otherwise mitigated. The Exchange believes that Rule 14.11(c)(4)(B)(i)(b) is intended to address concerns around the size and manipulability of the Index's components. The exchange believes that these policy concerns would be mitigated by the fact that at least 90% of the weight of the Index will be comprised of securities that have a minimum par amount of $10 million and were a constituent of an offering where the original deal size was at least $250 million.[16]

The Exchange also believes that the availability of information regarding the ABS and CMBS that comprise the Index that Rule 14.11(c)(4)(B)(i)(f) is intended to address would also be mitigated by the fact that the Fund will only hold ABS and CMBS for which the bond indenture requires the public disclosure of a statement to noteholders on a no less frequent than quarterly basis.

## III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2018–018 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [17] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[18] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.[19] Specifically, in light of the Index's composition of ABS and CMBS and the proposed continued listing criteria regarding the availability of public information applicable to the Shares, the Commission seeks commenters' views on whether the

[10] The term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[11] Cash equivalents are short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[12] Centrally cleared swaps are cleared through a central clearinghouse and, as such, the counterparty risk traditionally associated with over-the-counter swaps is eliminated.

[13] ETFs include Index Fund Shares (as described in Rule 14.11(c)); Portfolio Depositary Receipts (as described in Rule 14.11(b)); and Managed Fund Shares (as described in Rule 14.11(i)). The ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. The Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

[14] Rule 14.11(c)(4)(B)(i)(b) requires that components that in the aggregate account for at least 75% of the weight of the index or portfolio each have a minimum original principal amount outstanding of $100 million or more. As of February 22, 2018, only 57.9% of the weight of the Index components had a minimum original principal amount outstanding of $100 million or more.

[15] Rule 14.11(c)(4)(B)(i)(f) requires that component securities that in aggregate account for at least 90% of the Fixed Income Securities portion of the weight of the index or portfolio must be either: (1) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (2) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (3) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (4) exempted securities as defined in section 3(a)(12) of the Act; or (5) from issuers that are a government of a foreign country or a political subdivision of a foreign country. According to the Exchange, as of February 22, 2018, only 68.0% of the weight of the Index components met the requirements of Rule 14.11(c)(4)(B)(i)(f).

[16] The Exchange notes that similar standards have been applied to other comparable funds, and cites to Securities Exchange Act Release No. 82295 (December 12, 2017), 82 FR 60056 (December 18, 2017) (SR–NYSEArca–2017–56). Further, according to the Exchange, the Index is broad-based and currently includes 2,693 component securities. The Exchange also states that, on a continuous basis, the Index will contain at least 500 component securities and comply with the index methodology description provided above.

[17] 15 U.S.C. 78s(b)(2)(B).

[18] *Id.*

[19] 15 U.S.C. 78f(b)(5).

information provided in the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

## IV. Procedure: Request for Written Comments

Interested persons are invited to submit written views, data, and arguments concerning the foregoing, including whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[20]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by August 30, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 13, 2018.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2018–018 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2018–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–018 and should be submitted on or before August 30, 2018. Rebuttal comments should be submitted by September 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–17008 Filed 8–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

[20] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[21] 17 CFR 200.30–3(a)(57).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83768; File No. SR–NYSE–2018–26]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Amending the Exchange's Rules Relating to Reserve Orders, Primary Pegged Orders, and Setter Priority for UTP Securities Trading on the Exchange's Pillar Platform

August 3, 2018.

## I. Introduction

On June 1, 2018, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE rules concerning Reserve Orders,[3] Primary Pegged Orders,[4] and setter priority.[5] On June 8, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[6] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on June 20, 2018.[7] The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes several changes to the Reserve Order and the Primary Pegged Order, as set forth in NYSE Rule 7.31. The Exchange also proposes changes to the setter priority, as set forth in NYSE Rule 7.36(h).

### *A. Reserve Orders*

The Exchange proposes several changes to the rules for Reserve Orders, in order to reduce the number of child orders associated with each Reserve Order, to codify existing functionality, and provide more clarity to existing Exchange rules. A ''Reserve Order'' is a limit order with a quantity displayed, ranked Priority 2—Display Orders, and a non-displayed quantity held in reserve, ranked Priority 3—Non-Displayed.[8] Both the display quantity and the reserve interest of an arriving marketable Reserve Order are eligible to trade with resting interest in the Exchange Book or to route to an Away Market.[9]

First, the Exchange proposes to change how the displayed quantity is replenished. Currently, the display

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Rule 7.31(d)(1).

[4] *See* NYSE Rule 7.31(h)(2).

[5] *See* NYSE Rule 7.36(h) for the rules concerning setter priority.

[6] In Amendment No. 1, among other changes, the Exchange revised proposed Section 7.31(d)(1)(B) to clarify that the term ''child'' order refers to each display quantity with a different working time. Amendment No. 1 was reflected in the notice of filing of proposed rule change that was published in the **Federal Register**. *See infra* note 7.

[7] *See* Securities Exchange Act Release No. 83432 (Jun. 14, 2018), 83 FR 28701 (Jun. 20, 2018) (''Notice'').

[8] *See* Section II.C. *infra* for a description of the Exchange's setter priority.

[9] *See* NYSE Rule 7.31(d)(1). The term ''Exchange Book'' is defined in NYSE Rule 1.1(a) as the Exchange's electronic file of orders, containing all orders on the Exchange. The term ''Away Market'' is defined in NYSE Rule 1.1(ff) as any exchange, alternative trading systems or other broker-dealer with which the Exchange maintains an electronic linkage and that provides instantaneous responses to orders routed from the Exchange. The Exchange will designate from time to time those ATSs or other broker-dealers that qualify as Away Markets.

portion is replenished following any execution. Under the proposed rule change, the displayed portion of a Reserve Order would be replenished only when the display quantity has been decremented to below one round lot. The replenish quantity would be the minimum display size of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity.[10] According to the Exchange, this proposed change would reduce the number of child orders.[11] The Exchange asserts that minimizing the number of child orders for a Reserve Order would reduce the potential for market participants to detect that a child order that appears on the Exchange's proprietary market data feeds is associated with a Reserve Order,[12] and the Exchange further notes that the proposed change would be consistent with the functioning of reserve orders on other national securities exchanges.[13]

Second, the Exchange proposes that when a Reserve Order is replenished from reserve interest and already has two child orders that, if combined, would equal less than one round lot, the child order with the later working time would rejoin the reserve interest and be assigned the new working time assigned to the next replenished quantity.[14] According to the Exchange, the proposed addition would reduce the potential for market participants to detect that a child order is associated with a Reserve Order.[15]

Third, the Exchange proposes to amend its rules to reflect that, if a Reserve Order is not routable, the replenish quantity will be assigned a display and working price consistent with the instructions of the order.[16] The Exchange asserts that the proposed rule text represents current functionality and would add transparency and clarity to the Exchange's rules.[17]

Fourth, the Exchange proposes new rules concerning routable Reserve Orders. Under the proposed rules, the Exchange would evaluate a routable Reserve Order for routing both on arrival and each time the displayed quantity is replenished.[18] In cases where an order is required to be routed, the Exchange proposes that the routing quantity would route from the reserve interest before the display quantity is published.[19] Further, if after routing from the reserve interest, less than one round lot remains that is available to display, the Exchange proposes to wait until the routed quantity returns (executed or unexecuted) before publishing the display quantity.[20] According to the Exchange, this functionality would reduce the possibility of having multiple child orders.[21]

Fifth, the Exchange proposes to amend its rules to reflect how it currently treats the quantity of a routed Reserve Order that is returned unexecuted.[22] According to the Exchange, such interest joins the working time of the existing reserve interest.[23] If there is no reserve interest, the returned quantity is assigned a new working time as reserve interest.[24] The Exchange asserts that this treatment is appropriate because at the time the unexecuted routed interest returns to the Exchange, the order may not be eligible to replenish the display quantity.[25] In either case, the reserve interest would replenish the display quantity under the circumstances described above.[26]

Finally, the Exchange proposes to add rule text specifying that requests to reduce the size of a Reserve Order will result in the cancellation of the reserve interest before the cancellation of the display quantity.[27] The Exchange also proposed that, if there is more than one child order, the child order with the later working time will be canceled first.[28]

### *B. Primary Pegged Order*

A ''Primary Pegged Order'' is a pegged order to buy (sell) with a working price that is pegged to the PBB (PBO),[29] with no offset allowed.[30] These orders are rejected on arrival, or canceled when resting, if there is no PBB (PBO) against which to peg. Current NYSE Rule 7.31(h)(2)(B) provides that a Primary Pegged Order will be rejected when the PBBO is locked or crossed. The Exchange proposes that, in addition, if the PBBO is locked or crossed when the display quantity of the Primary Pegged Reserve Order is to be replenished, the entire order will be canceled.[31]

### *C. Setter Priority*

On the Exchange, setter priority means that the market participant that sets the best bid or offer on the Exchange while either establishing a new NBBO[32] or joining an Away Market NBBO[33] receives priority in the allocation of executions over other interest at the same price level.[34] On the Exchange, only one order is eligible for setter priority at each price.[35] The market participant with the setter priority receives 15% of each trade at that price (after unexecuted market orders with the same working price have executed),[36] plus its parity share, until the setter's order is filled.[37]

The Exchange proposes to amend the setter priority rule to reflect the existing operation of this function, under which an order is not eligible for setter priority if there is an odd-lot sized order with setter priority at that price.[38] The Exchange states that this change is consistent with current functionality and asserts that the change would add transparency and clarity to its rules.[39]

The Exchange proposes to add similar language to NYSE Rule 7.36(h)(1)(D) to specify that, during a Short Sale Period, if an odd-lot child of a short sale

[10] *See* Proposed NYSE Rule 7.31(d)(1)(A). This language replaces the current text that states ''[t]he Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order,'' which the Exchange proposes to delete.

[11] *See* Notice, *supra* note 7, at 28702. The Exchange proposes to define the term ''child order'' in proposed NYSE Rule 7.31(d)(1)(B). A ''child'' order would be each display quantity of a Reserve Order with a different working time.

[12] *See* Notice, *supra* note 7, at 28702.

[13] *See* Notice, *supra* note 7, at 28704.

[14] *See* Proposed NYSE Rule 7.31(d)(1)(B)(i). The Exchange proposes to amend NYSE Rule 7.36(h)(3)(C) to treat child orders that fall under this provision consistent with the current NYSE rules which provide that odd-lot orders that are assigned new working times lose Setter Priority. *See* Proposed NYSE Rule 7.36(h)(3)(C).

[15] *See* Notice, *supra* note 7, at 28704.

[16] *See* Proposed NYSE Rule 7.31(d)(1)(B)(ii).

[17] *See* Notice, *supra* note 7, at 28702.

[18] *See* Proposed NYSE Rule 7.31(d)(1)(D).

[19] *See* Proposed NYSE Rule 7.31(d)(1)(D)(i).

[20] *Id.*

[21] *See* Notice, *supra* note 7, at 28702.

[22] *See* Notice, *supra* note 7, at 28703.

[23] *See* Proposed NYSE Rule 7.31(d)(1)(D)(ii).

[24] *Id.*

[25] *See* Notice, *supra* note 7, at 28703.

[26] *See* Proposed NYSE Rule 7.31(d)(1)(D)(ii).

[27] *See* Proposed NYSE Rule 7.31(d)(1)(E).

[28] *Id.*

[29] The terms ''PBB'' and ''PBO'' are defined in NYSE Rule 1.1(dd) as highest protected bid or best protected bid and lowest protected offer or best protected offer, respectively.

[30] *See* NYSE Rule 7.31(h)(2).

[31] *See* Proposed NYSE Rule 7.31(h)(2)(B).

[32] *See* NYSE Rule 1.1(dd). The term ''NBBO'' means the national best bid or offer.

[33] *See id.* for definition of ''NBBO.'' *See* NYSE Rule 1.1(ff) for a definition of ''Away Market.''

[34] *See* NYSE Rules 7.36(h) and 7.37(b).

[35] *See* NYSE Rules 7.36(h)

[36] *See* NYSE Rule 7.36(e) (stating that unexecuted market orders have first priority (Orders ranked Priority 1—Market Orders), non-marketable limit orders with a displayed working price have second priority (Orders ranked Priority 2—Display Orders), and non-marketable limit orders with no displayed working price have third priority (Orders ranked Priority 3—Non-Display Orders). Setter priority would be assigned to an order with second priority (Priority 2—Display Orders). *See* NYSE Rule 7.36(h).

[37] *See* NYSE Rule 7.37(b) for order allocation, including, but not limited to, the Exchange's allocation wheel, parity allocation, and Exchange book participant allocation, and floor broker participation.

[38] *See* Proposed NYSE Rule 7.36(h).

[39] *See* Notice, *supra* note 7, at 28703.

Reserve Order has setter priority, and the Permitted Price at which the order would be replenished would be a different price, the replenish quantity would not be eligible for setter priority.[40]

The Exchange also proposes to add two circumstances in which an order would be evaluated for setter priority. Currently, an order will be evaluated for setter priority on arrival (including any portion that has been routed and returns unexecuted) and when the order becomes eligible to trade for the first time upon transitioning to a new trading session.[41] First, NYSE proposes that an order would be evaluated for setter priority when resting and assigned a new display price.[42] If multiple orders reprice at the same time, none of the orders would be eligible for setter priority unless one order is equal to or greater than a round lot and the sum of the other orders at the same price is less than one round lot.[43] Second, the Exchange proposes that an order would be evaluated for setter priority when the display quantity of a Reserve Order is replenished.[44] The Exchange asserts that, if a repriced resting or replenished Reserve Order meets the conditions for establishing setter priority,[45] then that order is aggressively displaying liquidity on the Exchange, which the Exchange seeks to encourage by providing a setter priority allocation.[46]

## III. Discussion and Commission Findings

After careful review of the proposal, as modified by Amendment No. 1, the Commission finds that the proposed rule change is consistent with the requirements of the Act[47] and the rules and regulations thereunder applicable to a national securities exchange.[48] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[49] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposal would alter how UTP Securities trade on the Exchange's Pillar trading platform with respect to two order types—reserve orders and primary pegged orders—and would also amend the rules that determine when orders are eligible for setter priority. The proposed changes relating to Reserve Orders would seek to reduce the quantity of child orders and the potential for information leakage. The Commission believes that the proposal to replenish the displayed quantity when it falls below one round lot is consistent with reserve order functioning on other national securities exchanges that the Commission has found to be consistent with the Exchange Act.[50] The Commission also believes that the proposal is consistent with Section 6(b)(5)—with respect to replenishing a Reserve Order that has two existing child orders totaling less than one round lot, routing from reserve interest before publishing the display quantity, and aligning the Exchange's rule text to the existing treatment of Reserve Orders that are not routable and of routed Reserve Orders that return unexecuted—because the proposed changes are reasonably designed to encourage the provision of liquidity on the exchange by reducing the likelihood of adverse selection against liquidity providers through information leakage and providing clarity to market participants, while not permitting unfair discrimination on the exchange.

The proposed changes relating to Primary Pegged Reserve Orders would provide that, if the PBBO is locked or crossed when the display quantity of the order is to be replenished, the entire order would be canceled. The Commission believes that the proposal is reasonably designed to prevent the display of locked or crossed quotations in NMS securities.

The rules relating to the setter priority would change in two ways. First, the rules would be amended to reflect that, under existing order function, an order is not eligible for setter priority if there is an odd-lot sized order with setter priority at that price. Second, orders would be evaluated for setter priority under two additional circumstances—when an order is resting and assigned a new display price, and when the display quantity of a Reserve Order is replenished. The Commission believes that these proposed changes are reasonably designed to provide incentives for market participants to display liquidity on the Exchange.

Accordingly, the Commission finds that the proposal is consistent with the requirements of the Act, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[51] that the proposed rule change (SR–NYSE–2018–26), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–17004 Filed 8–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

[40] *See* Proposed NYSE Rule 7.36(h)(1)(D).

[41] *See* NYSE Rule 7.36(h)(1)(A)–(B).

[42] *See* Proposed NYSE Rule 7.36(h)(1)(C).

[43] *Id.*

[44] *See* Proposed NYSE Rule 7.36(h)(1)(D). In connection with this proposed change, the Exchange also proposed to delete current NYSE Rule 7.36(h)(4)(B), which states that setter priority is not available when the reserve quantity replenishes the display quantity of a Reserve Order.

[45] The requirements for an order to achieve setter priority are that it is an order ranked Priority 2—Display Orders with a display quantity of at least one round lot, that it establishes a new BBO, and that it either establishes a new NBBO or joins an Away Market NBBO. *See* NYSE Rule 7.36(h).

[46] *See* Notice, *supra* note 7, at 28704–05.

[47] 15 U.S.C. 78f.

[48] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[49] 15 U.S.C. 78f(b)(5).

[50] *See* Notice, *supra* note 7, at 28704.

[51] 15 U.S.C. 78s(b)(2).

[52] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83771; File No. SR–NASDAQ–2018–060]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Terms Under Chapter I, Section 1 of the Options Rules

August 3, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 20, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to proposal to amend The Nasdaq Options Market LLC (''NOM'') Rules at Chapter I, Section 1 to define certain terms.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NOM rules currently do not define an ''in-the-money'' or ''out-of-the-money'' option. The Exchange proposes to define these terms at Chapter I, Section 1 to bring greater transparency to NOM rules. In addition, the Exchange notes that the terms, ''in-the-money'' and ''out-of-the-money'' are generally accepted terms in the options industry. These terms are utilized throughout the options industry. The Exchange desires for its Participants to have a clear understanding of how NOM's System defines these terms.

The Exchange proposes to define an ''in-of-the-money'' option at Chapter I, Section 1(a)(68). The Exchange proposes that the term ''in-the-money'' shall mean the following: For call options, all strike prices below the offer in the underlying security on the primary listing market; for put options, all strike prices above the bid in the underlying security on the primary listing market. The Exchange proposes to define an ''out-of-the-money'' option at Chapter I, Section 1(a)(69). The Exchange proposes that the term ''out-of-the-money'' shall mean the following: For call options, all strike prices above the offer in the underlying security on the primary listing market; for put options, all strike prices below the bid in the underlying security on the primary listing market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange's proposal to define the terms ''in-the-money'' and ''out-of-the-money'' options is consistent with the Act and protects investors and the public interest by bringing greater transparency to the Rulebook. In addition, the Exchange notes that the terms, ''in-the-money'' and ''out-of-the-money'' are generally accepted terms in the options industry. These terms are utilized throughout the options industry. The Exchange desires for its Participants to have a clear understanding of how NOM's System defines these terms.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to define the terms ''in-the-money'' and ''out-of-the-money'' options does not unduly burden competition, rather it adds greater transparency to the Rulebook.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6]

A proposed rule change filed under Rule 19b–4(f)(6)[7] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[8] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that immediately defining the terms ''in-the-money'' and ''out-of-the-money'' options within its Rulebook would provide greater transparency to its Participants. For the same reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

• Send an email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2018–060 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2018–060. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–060 and should be submitted on or before August 30, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–17006 Filed 8–8–18; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15616 and #15617; IOWA Disaster Number IA–00078]**

### Administrative Declaration of a Disaster for the State of Iowa

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Iowa dated 07/30/2018.

*Incident:* Tornado.

*Incident Period:* 07/19/2018.

**DATES:** Issued on 07/30/2018.

*Physical Loan Application Deadline Date:* 09/28/2018.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/30/2019.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Marshall

*Contiguous Counties:*

Iowa: Grundy, Hardin, Jasper, Poweshiek, Story, Tama

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 3.875 |
| Homeowners without Credit Available Elsewhere | 1.938 |
| Businesses with Credit Available Elsewhere | 7.220 |
| Businesses without Credit Available Elsewhere | 3.610 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.500 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.500 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 3.610 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.500 |

The number assigned to this disaster for physical damage is 15616 C and for economic injury is 15617 0.

The State which received an EIDL Declaration # is Iowa.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: July 30, 2018.

**Linda E. McMahon,**

*Administrator.*

[FR Doc. 2018–17022 Filed 8–8–18; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 10490]**

### Defense Trade Advisory Group; Notice of Open Meeting

The Defense Trade Advisory Group (DTAG) will meet in open session from 1:00 p.m. until 5:00 p.m. on Thursday, October 25, 2018 at 1777 F Street NW, Washington, DC 20006. Entry and registration will begin at 12:30 p.m. The membership of this advisory committee consists of private sector defense trade representatives, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. The purpose of the meeting will be to discuss current defense trade issues and topics for further study. The following agenda topics will be discussed and final reports presented: (1) Oversight of technical data under the ITAR and NISPOM; (2) Challenges regulated entities face in advising the Department of ownership changes that implicate existing licenses and foreign persons, and processes the Department may implement to facilitate the provisions of this information; (3) Possible schedule for future ongoing periodic review of USML categories; (4) Developing a definition for common carrier; and (5) Issues that exist with licensing of defense articles, including intelligence related products, related technical data, and defense services to the ''Five Eyes'' countries of the U.S., UK, Australia, Canada and New Zealand. Members of the public may attend this open session and will be permitted to participate in the question and answer discussion period following the formal DTAG presentation on each agenda topic in accordance with the Chair's instructions. Members of the public may also, if they wish, submit a brief statement (less than 3 pages) to the committee in writing for inclusion in the public minutes of the meeting. As seating is limited to 125 persons, each member of the public that wishes to attend this plenary session must provide: His/her name and contact information such as email address and/

or phone number and any request for reasonable accommodation to the DTAG Alternate Designated Federal Officer (DFO), Anthony Dearth, via email at *DTAG@state.gov* by COB Monday, October 8, 2018. If notified after this date, the Department might be unable to accommodate requests due to requirements at the meeting location. One of the following forms of valid photo identification will be required for admission to the meeting: U.S. driver's license, passport, U.S. Government ID or other valid photo ID.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Eisenbeiss, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 663–2835 or email *DTAG@state.gov.*

**Anthony M. Dearth,**

*Alternate Designated Federal Officer, Defense Trade Advisory Group, Department of State.*

[FR Doc. 2018–17085 Filed 8–8–18; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF STATE

**[Public Notice: 10482]**

### Industry Advisory Group: Notice of Open Meeting

The Industry Advisory Group (IAG) of the Bureau of Overseas Buildings Operations (OBO) will meet on Friday, September 21 from 1:30 p.m. until 3:30 p.m. Eastern Daylight Time. The meeting is open to the public and will be held in the Loy Henderson Conference Room of the U.S. Department of State, located at 2201 C Street NW (entrance on 23rd Street) Washington, DC. For logistical and security reasons, the public must enter and exit the building using only the 23rd Street entrance.

This committee serves the U.S. government in a solely advisory capacity concerning industry and academia's latest concepts, methods, best practices, innovations, and ideas related to OBO's mission to provide safe, secure, and functional facilities that represent the U.S. government to the host nation and support our staff in the achievement of U.S. foreign policy objectives.

The majority of the meeting will be devoted to discussions between the Department's senior management and IAG representatives with respect to industry and academia's latest concepts, methods, best practices, innovations and ideas related to property management that are applicable to OBO's vital mission. Reasonable time will be provided for members of the public to provide comment.

Admittance to the State Department building will be by means of a pre-arranged clearance list. In order to register, you must provide the following information via email to *IAGR@state.gov*: First and last name, company/firm name (if applicable), date of birth, country of citizenship, and the number and issuing country/state associated with a valid government-issued ID (*i.e.,* U.S. government ID, U.S. military ID, passport, or driver's license) and requests for reasonable accommodation by September 7. You can also visit the OBO website at *http://overseasbuildings.state.gov/* for additional information. Requests made after that date will be considered, but may not be able to be fulfilled. The public may attend this meeting as seating capacity allows.

Personal data is requested pursuant to Pubic Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database.

Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/242611.pdf* for additional information.

Please contact *IAGR@state.gov* with any questions.

**William Moser,**

*Acting Director, U.S. Department of State, Bureau of Overseas Buildings Operations.*

[FR Doc. 2018–17061 Filed 8–8–18; 8:45 am]

**BILLING CODE 4710–51–P**

## DEPARTMENT OF STATE

**[Public Notice: 10483]**

### 60-Day Notice of Proposed Information Collection: Affidavit of Physical Presence or Residence, Parentage and Support

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to October 9, 2018.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2018–0032'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: RiversDA@state.gov*
- *Regular Mail:* U.S. Department of State, CA/OCS/PMO, SA–17, 10th Floor, Washington, DC 20522–1710.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Affidavit of Physical Presence or Residence, Parentage and Support.
- *OMB Control Number:* 1405–0187.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–5507.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 17,950.
- *Estimated Number of Responses:* 17,950.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 8,975 annual hours.
- *Frequency:* On occasion.
- *Obligation To Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public

record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

The information gathered, including dates, places and purposes for time spent in the United States and abroad, is necessary to determine whether a U.S. national biological parent(s) of a child born abroad or in a United States territory has met the statutory physical presence or residence requirements for his or her child to acquire U.S. nationality at birth; and whether a U.S. national father of a child born abroad out of wedlock has met additional requirements of 8 U.S.C. 1409(a) in relation to biological parentage and legal relationship with and financial support of his child born abroad out of wedlock, in order for such child to acquire U.S. nationality at birth.

**Methodology**

The information is collected in person or is submitted by mail. The form may be accessed online, completed electronically, printed, and signed; or it may be downloaded, printed, and filled out manually.

**Michelle Bernier-Toth,**

*Managing Director, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2018–17084 Filed 8–8–18; 8:45 am]

**BILLING CODE 4710–26–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36151]**

### Foxville and Northern Railroad Company LLC—Lease and Operation Exemption—Badin Business Park, LLC

Foxville and Northern Railroad Company LLC (FN), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to lease from Badin Business Park LLC (BBP) [1] and operate approximately 11.11 miles of rail line from milepost WF–0.0 in Halls Ferry Junction, to milepost WF–11.11 in Badin, all in Stanly County, N.C. (the Line). FN and Winston Salem Southbound Railroad (WSSB) will interchange traffic at milepost WF–5.90 in Whitney.

According to FN, two agreements govern the proposed transaction: (i) A lease agreement; and (ii) an interchange agreement. Specifically, FN anticipates entering into a lease agreement with BBP on or about August 1, 2018, and an interchange agreement with WSSB upon obtaining operating authority.

FN certifies that its projected annual revenues as a result of the transaction will not result in its becoming a Class II or Class I rail carrier and will not exceed $5 million. FN also certifies that the transaction involves no provision or agreement that may limit future interchange with other carriers under 49 CFR 1150.33(h).

The transaction may be consummated on or after August 23, 2018, the effective date of the exemption (30 days after the verified notice of exemption was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 16, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36151, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John E. Elkin, President and General Manager, Foxville and Northern Railroad Co. LLC., P.O. Box 577, Pelion, SC 29123.

According to FN, this action does not require environmental review under 49 CFR 1105.6(c) or historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available on our website at ''*WWW.STB.GOV*.''

Decided: August 6, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2018–17067 Filed 8–8–18; 8:45 am]

**BILLING CODE 4915–01–P**

[1] FN states that BBP is a wholly owned subsidiary of Alcoa, Inc.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice Before Waiver With Respect To Land at Hanover County Municipal Airport, Hanover, Virginia

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent of waiver with respect to land.

**SUMMARY:** The FAA is publishing notice of proposed release of 0.589 acres of land at the Hanover County Airport, Hanover, Virginia to the Virginia Department of Transportation for the widening of Sliding Hill Road to allow for two lanes of traffic in each direction. There are no adverse impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land has been established and will be provided to the County of Hanover for use on future AIP eligible Airport development. The Airport will benefit from the improvements associated with Sliding Hill Road with the enhanced access to the development on the east side of the airport.

**DATES:** Comments must be received on or before *September 10, 2018.*

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address: Matthew J. Thys, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Richard Henry Rempe, Airport Manager, Hanover County Municipal Airport, at the following address: Richard Henry Rempe, Airport Manager, Hanover County Municipal Airport, P.O. Box 470, Hanover, VA 23069–0470.

**FOR FURTHER INFORMATION CONTACT:** Mr. Matthew J. Thys, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, email *Matthew.Thys@faa.gov.*

**SUPPLEMENTARY INFORMATION:** The Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21), as amended, requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Dulles, Virginia, on August 2, 2018.

**Matthew J. Thys,**

*Manager, Washington Airports District Office, Eastern Region.*

[FR Doc. 2018–17102 Filed 8–8–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2015–0480]**

### Commercial Driver's License Standards: Application for Exemption; CRST Expedited (CRST)

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for renewal of exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from CRST Expedited (CRST) for a renewal of its exemption from the regulation that requires a commercial learner's permit (CLP) holder to be accompanied by a commercial driver's license (CDL) holder with the proper CDL class and endorsements, seated in the front seat of the vehicle while the CLP holder operates it on public roads or highways. The exemption renewal would allow CLP holders who have passed the skills test but not yet received the CDL document to drive a CRST commercial motor vehicle (CMV) accompanied by a CDL holder who is not necessarily in the passenger seat, provided the driver has documentation of passing the skills test. CRST currently holds an exemption for the period September 23, 2016 through September 24, 2018. FMCSA requests public comment on CRST's application for exemption.

**DATES:** Comments must be received on or before September 10, 2018.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2015–0480 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal Docket Management System is available 24 hours each day, 365 days each year.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4225. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2015–0480), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2015–0480'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. An option to upload a file is provided. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

### II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### III. Request for Exemption Renewal

CRST's initial exemption application from the provisions of 49 CFR 383.25(a)(1) was submitted in 2015; a copy is in the docket identified at the beginning of this notice. That 2015 application describes fully the nature of CRST's operations and CMV drivers. The exemption was granted on September 23, 2016 (81 FR 65696). CRST now requests a renewal of the exemption.

The current exemption excuses CRST from the requirement that a driver accompanying a CLP holder must be physically present at all times in the front seat of a CMV, on the condition that the CLP holder has successfully passed an approved CDL skills test. CRST's 2015 application argued that the existing requirement is inefficient and

unproductive, as the company must incur added expense to send the driver to his or her home State to collect a CDL document. Under the rule, the driver is not only unable to utilize newly acquired driving skills, but must also forego compensation before obtaining a CDL. CRST believes that FMCSA should renew the exemption for an additional 5-year period because it results in safer drivers. It allows CRST to foster a more productive and efficient training environment by allowing CLP holders to hone their recently acquired driving skills through on-the job-training and to begin earning an income right away, producing immediate benefits for the driver, the carrier, and the economy as a whole.

## IV. Method To Ensure an Equivalent or Greater Level of Safety

CRST states that the exemption does not negatively affect safety outcomes. Instead, the exemption allows drivers trained out-of-State to obtain on-the-job experience in CRST's comprehensive training program while avoiding significant delays and skill degradation. The exemption creates immediate economic and safety benefits for both the CLP holders and CRST—drivers earn an income as part of a team operation while improving their driver skills and gaining valuable experience.

CRST indicated in its renewal application that data show that drivers utilizing the exemption demonstrated better safety outcomes than non-exempt drivers. Through the end of 2016, CRST reported zero accidents to FMCSA involving drivers utilizing the exemption.

In the June 12, 2017, **Federal Register**, FMCSA granted the renewal of a similar exemption from 49 CFR 383.25(a)(1) to C.R. England, Inc. (C.R. England) for a five-year period. Under the terms and conditions of that exemption, a CLP holder who has documentation of passing the CDL skills test may drive a CMV for C.R. England without being accompanied by a CDL holder in the front seat. The Agency believed that C.R. England's request for exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (82 FR 26975).

A copy of CRST's application for exemption renewal is available for review in the docket for this notice.

Issued on: August 2, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–17063 Filed 8–8–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0159]**

### Agency Information Collection Activities; Revision of an Approved Information Collection Request: Commercial Driver Licensing and Test Standards

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for information.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests approval to revise and renew an ICR titled, ''Commercial Driver Licensing and Test Standards,'' due to an increase in the number of commercial driver's license records and the addition of one information collection item: ''Driver completion of knowledge and skills tests 49 CFR 384.201.'' This ICR is needed to ensure that drivers, motor carriers and the States are complying with notification and recordkeeping requirements for information related to testing, licensing, violations, convictions and disqualifications and that the information is accurate, complete and transmitted and recorded within certain time periods as required by the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended.

**DATES:** We must receive your comments on or before October 9, 2018.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2126–0011 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West building, Ground Floor, Room 12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the dockets, or go to the street address listed above.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

*Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Mr. Selden Fritschner, Office of Safety Programs, Commercial Driver's License Division (MC–ESL), Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: 202–366–0677; email: *selden.fritschner@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The licensed drivers in the United States deserve reasonable assurance that their fellow motorists are properly qualified to drive the vehicles they operate. Before the Commercial Motor Vehicle Safety Act of 1986 (CMVSA or the Act) Public Law 99–570, Title XII, 100 Stat. 3207–170, codified at 49 U.S.C. chapter 313) was signed by the President on October 27, 1986, 18 States and the District of Columbia authorized any person licensed to drive an automobile to also legally drive a

large truck or bus. No special training or special license was required to drive these vehicles, even though it was widely recognized that operation of certain types of vehicles called for special skills, knowledge and training. Even in the 32 States that had a classified driver licensing system in place, only 12 of these States required an applicant to take a skills test in a representative vehicle. Equally serious was the problem of drivers possessing multiple driver licenses. By spreading their convictions among several States, CMV drivers could avoid punishment for their infringements, and stay behind the wheel.

The CMVSA addressed these problems. Section 12002 of the Act makes it illegal for a CMV operator to have more than one driver's license. Section 12003 requires the CMV driver conducting operations in commerce to notify both the designated State of licensure official and the driver's employer of any convictions of State or local laws relating to traffic control (except parking tickets). This section also required the promulgation of regulations to ensure each person who applies for employment as a CMV operator to notify prospective employers of all previous employment as a CMV operator for at least the previous 10 years.

In section 12005 of the Act, the Secretary of Transportation (Secretary) is required to develop minimum Federal standards for testing and licensing of operators of CMVs.

Section 12007 of the Act also directs the Secretary, in cooperation with the States, to develop a clearinghouse to aid the States in implementing the one driver, one license, and one driving record requirement. This clearinghouse is known as the Commercial Driver's License Information System (CDLIS).

The CMVSA further requires each person who has a CDL suspended, revoked or canceled by a State, or who is disqualified from operating a CMV for any period, to notify his or her employer of such actions. Drivers of CMVs must notify their employers within 1 business day of being notified of the license suspension, revocation, and cancellation, or of the lost right to operate or disqualification. These requirements are reflected in 49 CFR part 383, titled ''Commercial Driver's License Standards; Requirements and Penalties.''

Specifically, section 383.21 prohibits a person from having more than one license; Section 383.31 requires notification of convictions for driver violations; section 383.33 requires notification of driver's license suspensions; section 383.35 requires notification of previous employment; and section 383.37 outlines employer responsibilities. Section 383.111 requires the passing of a knowledge test by the driver and section 383.113 requires the passing of a skills test by the driver; section 383.115 contains the requirement for the double/triple trailer endorsement, section 383.117 contains the requirement for the passenger endorsement, section 383.119 contains the requirement for the tank vehicle endorsement and section 383.121 contains the requirement for the hazardous materials endorsement.

Section 12011 of the CMVSA states that the Secretary shall withhold a portion of the Federal-aid highway funds apportioned to a State if the State does not substantially comply with the requirements in section 12009(a) of the Act. The information gathered during State compliance reviews is used to determine whether States are complying with these requirements.

A final rule was published on July 31, 2002 (67 FR 49742) implementing 15 of the 16 CDL related provisions of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748 (Dec. 9, 1999)) that were designed to enhance the safety of drivers on our nation's highways by ensuring that only safe drivers operate CMVs. These new requirements are contained in 49 CFR part 383 and include: Five new major and serious disqualifying offenses (section 383.51): Non-CMV disqualifying offenses by a CDL holder (section 383.51); disqualification of drivers determined to be an imminent hazard (section 383.52); a new school bus endorsement (section 383.123); a prohibition on issuing a hardship license to operate a CMV while under suspension (section 384.210); a prohibition on masking convictions (section 384.226); and various requirements for transmitting, posting and retaining driver convictions and disqualification records.

A Final Rule was published on December 1, 2008 (73 FR 73096) that implemented the 16th CDL related provision of MCSIA, the merging of the medical certification and CDL issuing processes.

An interim final rule (IFR) was published on May 5, 2003 (68 FR 23844) as a companion rule to the Transportation Security Administration's (TSA's) May 5, 2003 IFR implementing section 1012 of the USA PATRIOT Act (Pub. L. 107–56) on security threat assessments for drivers applying for or renewing a CDL with a hazardous materials endorsement. While TSA set the requirements in their rule; FMCSA has the responsibility as part of the CDL testing and issuance process to ensure that States are in compliance with the TSA requirements.

Section 4019 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. June 8, 1999, requires the Secretary of Transportation to review the procedures established and implemented by the States under 49 U.S.C. 31305 for CDL knowledge and skills testing to determine whether the current testing system is an accurate measure and reflection of an individual's knowledge and skills to operate a CMV. The results of this review were incorporated into the new ''2005 CDL Test System.'' A final rule was published on May 9, 2011, that requires the use of a State Testing System that is comparable to the 2005 CDL Test System.

Section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, August 10, 2005, requires the Department of Transportation (DOT) to prescribe regulations on minimum uniform standards for the issuance of commercial learner's permits (CLPs), as it has already done for CDLs [49 U.S.C. 31308]. More specifically, section 4122 provides that an applicant for a CLP must first pass a knowledge test which complies with minimum standards prescribed by the Secretary and may have only one CLP at a time; that the CLP document must have the same information and security features as the CDL; and that the data on each CLP holder must be added to the driver's record in CDLIS. The Final Rule published on May 9, 2011 also includes each of those requirements.

Section 703 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, October 13, 2006, requires the Secretary of Transportation to promulgate regulations implementing the recommendations in a memorandum issued by the DOT's Office of the Inspector General (OIG) on June 4, 2004, concerning verification of the legal status of commercial drivers, as well as the recommendations in a report issued by the OIG on February 7, 2006, titled ''Oversight of the Commercial Driver's License Program'' dealing with steps needed to improve anti-fraud measures in the CDL program. The specific recommendations include: The establishment of a legal presence requirement for CDL issuance; declaring a State out of substantial compliance with the CDL requirements if the State fails to impose adequate internal controls to detect and help prevent fraud in the CDL program or fails to take

adequate corrective action when fraud is discovered; and imposed sanctions against States for noncompliance. This Final Rule published on May 9, 2011 includes all the OIG's recommendations. Many of the operational procedures suggested by the OIG for carrying out the recommendations have also been adopted.

This information collection supports the DOT Strategic Goal of Safety by requiring that drivers of CMVs are properly licensed according to all applicable Federal requirements.

The 10-year employment history information supplied by the CDL holder to the employer upon application for employment (49 CFR 383.35) is used to assist the employer in meeting his/her responsibilities to ensure that the applicant does not have a history of high safety risk behavior.

State officials use the information collected on the license application form (49 CFR 383.71), the medical certificate information that is posted to the driving record and the conviction and disqualification data posted to the driving record (49 CFR 383.73) to prevent unqualified and/or disqualified CDL holders from operating CMVs on the nation's highways. State officials are also required to administer knowledge and skills tests to CDL driver applicants (49 CFR 384.202). The driver applicant is required to correctly answer at least 80 percent of the questions on each knowledge test to achieve a passing score on that test. To achieve a passing score on the skills test, the driver applicant must demonstrate that he/she can successfully perform all the skills listed in the regulations. During State CDL compliance reviews, FMCSA officials review this information to ensure that the provisions of the regulations are being carried out.

Without the aforementioned requirements, there would be no uniform control over driver licensing practices to prevent unqualified and/or disqualified drivers from being issued a CDL and to prevent unsafe drivers from spreading their convictions among several licenses in several States and remaining behind the wheel of a CMV. Failure to collect this information would render the regulations unenforceable.

This request for renewed approval includes one additional information collection item: ''Driver completion of knowledge and skills tests [49 CFR 384.201].'' This section is added as a result of a new requirement for States to assure the testing of commercial learner's permits follow a standardized testing procedure.

*Title:* Commercial Driver Licensing and Test Standards.

*OMB Number:* 2126–0011.

*Type of Request:* Revision of a currently-approved information collection.

*Respondents:* Drivers with a commercial learner's permit (CLP) or commercial driver's license (CDL) and State driver licensing agencies.

*Estimated Number of Respondents:* 7,364,972 driver respondents and 4,746 State respondents.

*Estimated Time per Response:* Varies.

*Expiration Date:* October 31, 2018.

*Frequency of Response:* Varies.

*Estimated Total Annual Burden:* 2,825,503 hours, which is the total of four tasks for CDL drivers (2,403,248 hours), added to a total of eight tasks for State driver licensing agency CDL activities (422,255 hours).

Information collection tasks and associated burden hours are as follows:

IC–1.1 Driver Notification of Convictions/Disqualifications to Employer: 473,577 hours

IC–1.2 Driver Providing Previous Employment History to New Employer: 297,758 hours

IC–1.3 Driver Completion of the CDL Application Form: 40,719 hours

IC–1.4 Driver Completion of Knowledge and Skills Tests: 1,591,194 hours

IC–2.1 State Recording of Medical Examiner's Certificate Information: 80,344 hours

IC–2.2 State Recording of the Self Certification of Commercial Motor Vehicle (CMV) Operation: 3,018 hours

IC–2.3 State Verification of Medical Certification Status: 3,180

IC–2.4 Annual State Certification of Compliance: 1,632 hours

IC–2.5 State Preparing for and Participating in Annual Program Review: 10,200 hours

IC–2.6 CDLIS/PDPS/State Recordkeeping: 214,548 hours

IC–2.7 Knowledge and Skills Test Recordkeeping: 82,034 hours

IC–2.8 Knowledge and Skills Test Examiner Certification: 27,299 hours

*Definitions:* Under 49 CFR 383.5:

*Commercial motor vehicle (CMV)* means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of hazardous materials as defined in this section.

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on: August 2, 2018.

**Kelly Regal,**

*Associate Administrator, Office of Research and Information Technology.*

[FR Doc. 2018–17064 Filed 8–8–18; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2018–0246]**

### Hours of Service of Drivers: HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc.; and Moran Environmental Recovery, LLC; Application for Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received a joint application from HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc.; and Moran Environmental Recovery, LLC, for exemption from the hours-of-service (HOS) regulations for drivers engaged in providing direct assistance in environmental emergencies or potential environmental emergencies. The applicants request a

five-year exemption from the ''14-hour rule'' for their drivers engaged in responding to environmental emergencies. FMCSA requests public comment on this application for exemption.

**DATES:** Comments must be received on or before September 10, 2018.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–2018–0246 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, please contact Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366–2722; Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2018–0246), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2018–0246'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

## III. Request for Exemption

The following companies are the applicants for this exemption: HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc. and Moran Environmental Recovery, LLC. The applicants' total number of commercial driver's license (CDL) holders is approximately 758, and their total number of commercial motor vehicles (CMVs) is approximately 840. All of these applicants are members of the Spill Control Association of America (SCAA). In responding to emergency incidents, SCAA members work alongside a mix of both private industry and public agencies, and their work often has a direct impact on protection of both public safety and the environment. SCAA advises that the applicants are contractually required to provide direct assistance to responsible parties who are experiencing environmental emergencies or potential environmental emergencies. The applicants define an environmental emergency as a sudden threat to the public health or the well-being of the environment, arising from the release or potential release of oil, radioactive materials, or hazardous chemicals into the air, land, or water. The applicants' employees are hybrid driver/operator/technicians, so the total on-duty time can be a challenge, especially after hours. Other job duties include industrial maintenance, spill response, sampling, lab packing and waste management. With the current driver shortage, obtaining drivers with these additional skills and experience is becoming more problematic.

The applicants are requesting relief from 49 CFR 395.3(a)(2), commonly known as the ''14-hour rule.'' The applicants state that the HOS rules have always been an issue for emergency response companies. The national shortage of drivers, and in their case, drivers with specialized safety and environmental training, has been worsening over the last few years, making this a critical issue. They are requesting this exemption to allow their companies to respond to a release or

threat of a release of oil and other hazardous materials. The applicants are requesting relief from this regulation with the following conditions:

- On-duty period would not exceed 4.5 additional hours for initial response;
- Any driver who exceeds the 14-hour period would in no case exceed a total of 8 hours drive time;
- Drivers would not exceed 70 hours on duty in 8 days;
- Drivers would be required to take 10 hours off duty, subsequent to the duty day; and
- All activities would be subject to the electronic logging device (ELD) rule.

According to the applicants, there would be a significant challenge in responding to environmental emergencies if the exemption was not granted. The initial response hours are the most critical in an environmental emergency and the ability to quickly respond is vital. They believe that a tightly managed exemption actually provides a risk averse situation by discouraging potentially unmanaged risk taking. If the exemption is not granted, there could be a disruption of nation/regional commerce activities, including power restoration activities and protection of interstate commerce and infrastructure. Granting the exemption would mitigate public transportation disruptions, much as tow trucks do when moving wrecked or disabled vehicles under 49 CFR 390.23(a)(ii)(3).

## IV. Method To Ensure an Equivalent or Greater Level of Safety

The applicants believe that the proposed relief, and the parameters in which their drivers operate, would continue to provide the highest level of safety and compliance, while prudently responding to incidents that threaten public safety and the environment. Safety is always the primary objective and guiding principle of all of the applicant's business activities as demonstrated by the following:

- All applicants have specific policies on ''fatigue and journey management.''
- Health and safety is paramount for all operations dealing with environmental emergencies and would remain the case when utilizing the exemption.
- Drivers who utilize this exemption may come back into compliance and restart the computation of maximum driving time only after 10 hours off duty which starts at the end of their extended hours period.
- The exemption would not exempt drivers/carriers from the requirements relating to the CDL, drug/alcohol testing, hazardous materials, size and weight, or State/Federal registration and tax requirements.
- The applicants understand the concepts of risk management and mitigation.
- The applicants maintain a multitude of safety, security, annual medical surveillance, and training plans, as well as comprehensive drug and alcohol programs compliant with multiple DOT departments.
- Robust preventative maintenance programs specific to the equipment are in place with each of the requesting applicants.

The applicants believe an equivalent level of safety will be achieved if their drivers/companies are exempt from the requirements as described in this notice. The requested exemption is for 5 years. A copy of the application for exemption is available for review in the docket for this notice.

Issued on: August 2, 2018.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2018–17062 Filed 8–8–18; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### National Hazardous Materials Route Registry

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice; revisions to the listing of designated and restricted routes for hazardous materials.

**SUMMARY:** This notice provides revisions to the National Hazardous Materials Route Registry (NHMRR) reported to the FMCSA as of March 31, 2018. The NHMRR is a listing, as reported by States and Tribal governments, of all designated and restricted roads and preferred highway routes for transportation of highway route controlled quantities (HRCQ) of Class 7 radioactive materials (RAM) (HRCQ/RAM) and non-radioactive hazardous materials (NRHMs).

**DATES:** Applicable date: August 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** Mr. Vincent Babich (202) 366–4871, or *vincent.babich@dot.gov,* Hazardous Materials Division, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., ET., Monday through Friday, except for Federal holidays.

## Legal Basis and Background

Under 49 United States Code (U.S.C.) 5112, sections (a)(2) and (b), States and Tribal governments are permitted to designate and limit highway routes over which hazardous materials (HM) may be transported, provided the State or Tribal government complies with standards prescribed by the Secretary of Transportation (the Secretary) and meets publication requirements in section 5112(c). To establish standards under section (b), the Secretary must consult with the States, and, under section (c), coordinate with the States to ''update and publish periodically'' a list of currently effective HM highway routing designations and restrictions. The requirements that States and Tribal governments must follow to establish, maintain, or enforce routing designations for the transport of placardable quantities of NRHMs are set forth in title 49 of the Code of Federal Regulations (CFR) part 397, subpart C. Subpart D of part 397 sets forth the requirements for designating preferred routes for HRCQ/RAM shipments as an alternative, or in addition, to Interstate System highways. For HRCQ/RAM shipments, section 397.101(b)(1) defines a preferred route as an Interstate Highway for which no alternative route is designated by the State, a route specifically designated by the State, or both. (See section 397.65 for the definition of ''NRHM'' and ''routing designations.'')

Under a delegation from the Secretary,[1] FMCSA has authority to implement 49 U.S.C. 5112.

Currently, 49 CFR 397.73 establishes public information and reporting requirements for NRHM. States or Tribal governments are required to furnish information regarding any new or changed routes to FMCSA within 60 days after establishment. Under 49 CFR 397.103, a State routing designation for HRCQ/RAM routes (preferred routes) as an alternative, or in addition, to an Interstate System highway, is effective when the authorized routing agency provides FMCSA with written notification, FMCSA acknowledges receipt in writing, and the route is published in FMCSA's National Hazardous Material Route Registry. The Office of Management and Budget has approved these collections of information under control number 2126–0014, Transportation of Hazardous Materials, Highway Routing.

In this notice, FMCSA is merely performing the ministerial function of updating and publishing the NHMRR

[1] 49 CFR 1.87(d)(2).

based on input from its State and Tribal partners under 49 U.S.C. 5112(c)(1). Accordingly, this notice serves only to provide the most recent revisions to the NHMRR; it does not establish any new public information and reporting requirements.

**Updates to the NHMRR**

FMCSA published the full NHMRR in a **Federal Register** Notice on April 29, 2015 (80 FR 23859). Since publication of the 2015 notice, FMCSA published one update to the NHMRR in a **Federal Register** Notice on August 8, 2016 (81 FR 52518).

This notice provides revisions to the NHMRR, reported to the FMCSA from August 8, 2016 through March 31, 2018. The revisions to the NHMRR listings in this notice supersede and replace corresponding NHMRR listings published in the April 29, 2015 notice and corresponding revisions to the NHMRR listings published in the August 8, 2016 notice. Continue to refer to the April 29, 2015 notice for additional background on the NHMRR and the August 8, 2016 notice for the procedures for State and Tribal government routing agencies to update their Route Registry listings and contact information.

The full current NHMRR for each state is posted on the FMCSA's internet website at: *https://www.fmcsa.dot.gov/regulations/hazardous-materials/national-hazardous-materials-route-registry.*

**Revisions to the NHMRR in This Notice**

In accordance with the requirements of 49 CFR 397.73 and 397.103, the NHMRR is being revised as follows:

The FMCSA Division field office contact information for each state is no longer listed in the NHMRR. This information is available on the internet at the FMCSA's website at: *https://www.fmcsa.dot.gov/mission/field-offices.* In addition, the contact information for each State and Tribal Government routing agency is no longer listed in the NHMRR. This information is also available on the internet at the FMCSA's website at: *https://www.fmcsa.dot.gov/regulations/hazardous-materials/national-hazardous-materials-route-registry-state.* The removal of this information from the NHMRR eliminates the presentation of redundant information and will streamline the future maintenance and update of the NHMRR.

Table 2—California—Designated HRCQ/RAM routes

Route Order Designator ''A'' is revised. The FMCSA Quality Assurance (QA) Comment is removed.

Route Order Designator ''B1'' is revised. The FMCSA QA Comment is removed.

Route Order Designator ''B3'' is revised to correct an editorial error.

Route Order Designator ''B5'' is revised.

Route Order Designator ''B5B'' is added and assigned a ''P'' designation.

Route Order Designator ''B5B–1.0'' is added and assigned a ''P'' designation.

Route Order Designator ''B5B–2.0'' is added and assigned a ''P'' designation.

Table 3.—California—Designated NRHM routes

Route Order Designator ''A1'' is revised.

Route Order Designator ''A2'' (Designation ''B'') is revised.

Route Order Designator ''A2A'' is revised.

Route Order Designator ''A4B–1.0'' is revised.

Route Order Designator ''A4B–2.0'' is added and assigned a ''B'' designation.

Route Order Designator ''A4B–3.0'' is added and assigned a ''B'' designation.

Route Order Designator ''A4B–4.0'' is added and assigned a ''B'' designation.

Route Order Designator ''A11P–2.0–I'' is revised.

Route Order Designator ''A11P–2.0–M'' is revised.

Route Order Designator ''A12P–2.0–J1'' is revised to correct an editorial error.

Route Order Designator ''A12P–2.0–M1'' is removed.

Route Order Designator ''A12P–2.0–M2'' is removed.

Route Order Designator ''A13P–2.0–M1'' is removed.

Route Order Designator ''A13P–2.0–M2'' is removed.

Route Order Designator ''A14P–2.0–M1'' is removed.

Route Order Designator ''B'' is removed.

Route Order Designator ''C1'' is removed.

Route Order Designator ''C2'' is removed.

Route Order Designator ''C3'' is removed.

Route Order Designator ''D'' is removed.

Table 4.—Pennsylvania—Restricted HM Routes

Route Order Designators ''E'', ''F'', ''G'', and ''P'' are revised to provide the current internet address for the Pennsylvania Turnpike website.

Table 5.—Virginia—Restricted HM routes

Route Order Designators ''D'', ''E'', ''F'', ''G'', and ''H''. The referenced internet addresses are updated.

Table 6.—Wyoming—Restricted HM Routes

Route Order Designator ''A'' is revised to remove obsolete references to the CFR.

**Route Order Key**

Each listing in the NHMRR includes codes to identify each route designation and each route restriction reported by the State Designation codes identify the routes along which a driver may or must transport specified HM. Among the designation codes is one for ''preferred routes,'' which is defined in § 397.101(b)(1) [2] and applies to transporting ''a highway route controlled quantity of Class 7 (radioactive) materials.'' Restriction codes identify the routes along which a driver may not transport specified HM shipments. Table 1 presents information on each restriction and designation code.

TABLE 1—RESTRICTION/DESIGNATION KEY

| Restrictions | Designations |
|---|---|
| 0—ALL Hazardous Materials | A—ALL NRHM Hazardous Materials. |
| 1—Class 1—Explosives | B—Class 1—Explosives. |
| 2—Class 2—Gas | I—Poisonous Inhalation Hazard (PIH). |
| 3—Class 3—Flammable | P—*Preferred Route* Class 7—Radioactive. |
| 4—Class 4—Flammable Solid/Combustible. | |
| 5—Class 5—Organic. | |
| 6—Class 6—Poison. | |
| 7—Class 7—Radioactive. | |

[2] 49 CFR 397.101(b)(1) defines ''preferred route'' as, ''an Interstate System highway for which an alternative route is not designated by a State routing agency; a State-designated route selected by a State routing agency pursuant to § 397.103; or both.''

TABLE 1—RESTRICTION/DESIGNATION KEY—Continued

| Restrictions | Designations |
|---|---|
| 8—Class 8—Corrosives.<br>9—Class 9—Dangerous (Other).<br>i—Poisonous Inhalation Hazard (PIH). | |

**Revisions to the National Hazardous Materials Route Registry (March 31, 2018)**

TABLE 2—CALIFORNIA—DESIGNATED HRCQ/RAM ROUTES

| Designation date | Route order | Route description | City | County | Designation(s) (A,B,I,P) | FMCSA QA comment |
|---|---|---|---|---|---|---|
| 10/19/94 | A | SR 905 from Mexican Border to Interstate 805. | | | P | |
| 10/19/94 | B1 | Interstate 805 from Interstate 5 [north of the City of San Diego] to State Route 905. | | San Diego | P | |
| 10/19/94 | B3 | Interstate 5 from Interstate 405 [MP 93—Irvine] to State 78 [MP 51—Carlsbad]. | | | P | |
| 10/19/94 and 04/01/17. | B5 | Interstate 605 from Interstate 210 [Duarte] to Interstate 105 [Norwalk]. | | Los Angeles | P | |
| 04/01/17 | B5B | Interstate 105 from Interstate 605 to Interstate 110. | | | P | |
| 04/01/17 | B5B–1.0 | Interstate 110 from Interstate 105 to State Route 47. | | | P | |
| 04/01/17 | B5B–2.0 | Interstate 710 from Interstate 105 to Seaside Freeway. | | | P | |

TABLE 3—CALIFORNIA—DESIGNATED NRHM ROUTES

| Designation date | Route order | Route description | City | County | Designation(s) (A,B,I,P) | FMCSA QA comment |
|---|---|---|---|---|---|---|
| 12/07/17 | A1 | State Route 905 from Mexican Border to Interstate 5. | | | B,I | |
| 10/28/92 and 12/07/17. | A2 | Interstate 805 from Interstate 5 [Torrey Pines] to State Route 905. | | San Diego | B | |
| 10/28/92 and 12/07/17. | A2A | Interstate 5 from Interstate 805 [MP 31—Torrey Pines] to State Route 905. | San Diego | San Diego | B | |
| 10/28/92 and 12/07/17. | A4B–1.0 | State Route 125 from State Route 54 to State Route 52. | La Mesa | San Diego | B | |
| 12/07/17 | A4B–2.0 | State Route 67 from Interstate 8 to State Route 52. | | | B | |
| 12/07/17 | A4B–3.0 | State Route 52 from State Route 67 to Interstate 805. | | | B | |
| 12/07/17 | A4B–4.0 | State Route 54 from Interstate 805 to State Route 125. | | | B | |
| 10/28/92 and 07/27/17. | A11P–2.0–I | Interstate 280 from Cesar Chavez St. [San Francisco] to Interstate 680/US 101 [San Jose]. | | | B | |
| 07/27/17 | A11P–2.0–M | Cesar Chavez St. from US 101 to Pier 80. | | | B | |
| 10/28/92 | A12P–2.0–J1 | Interstate 580 from Interstate 238 [Ashland] to Interstate 680 [Dublin]. | | | B | |

TABLE 4—PENNSYLVANIA—RESTRICTED HM ROUTES

| Designation date | Route order | Route description | City | County | Restriction(s) (0,1,2,3,4,5,6,7,8,9,i) |
|---|---|---|---|---|---|
| 01/01/40 | E | Interstate 70/76 [Allegheny Tunnel—Somerset County] from Exit 110 to Exit 146.<br>[Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)].<br>For additional information, visit the Pennsylvania Turnpike website: *https://www.paturnpike.com/commercial/placarded_loads.aspx*. | | Somerset | 1,2,3,4,5,6,7,8,i |
| 01/01/40 | F | Interstate 76 [Tuscarora Tunnel—Franklin/Huntingdon Counties] from Exit 180 to Exit 189.<br>[Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)].<br>For additional information, visit the Pennsylvania Turnpike website: *https://www.paturnpike.com/commercial/placarded_loads.aspx*. | | Franklin and Huntingdon. | 1,2,3,4,5,6,7,8,i |
| 01/01/40 | G | Interstate 76 [Blue Mountain Tunnel and Kittatinny Tunnel—Franklin County] from Exit 189 to Exit 201.<br>[Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)].<br>For additional information, visit the Pennsylvania Turnpike website: *https://www.paturnpike.com/commercial/placarded_loads.aspx*. | | Franklin | 1,2,3,4,5,6,7,8,i |
| 01/01/65 | P | Interstate 476 [Northeast Extension of PA Turnpike at Lehigh Tunnel] from Exit 56 to Exit 74.<br>[Effective July 16, 2000: All Table 1 materials and Explosives are still prohibited. Table 2 materials (except explosives) permitted for non-bulk packages (those placards that do not require four-digit codes)].<br>For additional information, visit the Pennsylvania Turnpike website: *https://www.paturnpike.com/commercial/placarded_loads.aspx*. | | Carbon and Lehigh | 1,2,3,4,5,6,7,8,i |

TABLE 5—VIRGINIA—RESTRICTED HM ROUTES

| Designation date | Route order | Route description | Restriction(s) (0,1,2,3,4,5,6,7,8,9,i) |
|---|---|---|---|
| 11/15/95 | D | Elizabeth River Tunnel [Downtown]—Interstate 264 [Phone: (757) 494–2424]<br>Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1, 7 (i.e., Highway Route Controlled Quantities-HRCQ), and toxic inhalation hazard are not allowed passage through this tunnel.<br>Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in ''non-bulk''.<br>Hazmat shipper MUST abide by rules and regulations outlined in VDOT's ''Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities.'' For additional information, see *http://www.virginiadot.org/info/resources/vdothazmat.pdf*. | 1,2,3,4,5,6,7,8,i |

TABLE 5—VIRGINIA—RESTRICTED HM ROUTES—Continued

| Designation date | Route order | Route description | Restriction(s) (0,1,2,3,4,5,6,7,8,9,i) |
|---|---|---|---|
| 11/15/95 | E | Elizabeth River Tunnel [Midtown]—US 58 [Phone: (757) 683–8123]<br>Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1, 7 (Highway Route Controlled Quantities (HRCQ)), and toxic inhalation hazard are not allowed passage through this tunnel.<br>Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in ''non-bulk''.<br>Hazmat shipper MUST abide by rules and regulations outlined in VA DOT's ''Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities.'' For additional information, see *http://www.virginiadot.org/info/resources/vdothazmat.pdf*. | 1,2,3,4,5,6,7,8,i |
| 11/15/95 | F | Monitor-Merrimac Memorial [Bridge/Tunnel]—Interstate 664 [Phone: (757) 247–2123]<br>Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1,7 (i.e., Highway Route Controlled Quantities-HRCQ), and toxic inhalation hazard are not allowed passage through this tunnel.<br>Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in non-bulk''.<br>Hazmat shipper MUST abide by rules and regulations outlined in VDOT's ''Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities.'' For additional information, see *http://www.virginiadot.org/info/resources/vdothazmat.pdf*. | 1,2,3,4,5,6,7,8,i |
| 11/15/95 | G | Hampton Roads Bridge-Tunnel [Interstate 64] [Phone: (757) 727–4832]<br>Materials in hazard classes 1.1, 1.2, 1.3, 2.3, 4.3, 6.1, 7 (i.e., Highway Route Controlled Quantities-HRCQ), and toxic inhalation hazard are not allowed passage through this tunnel.<br>Materials in hazard classes 2.1, 3, 5.1, 5.2, and 8, are allowed access to this tunnel only in ''non-bulk''.<br>Hazmat shipper MUST abide by rules and regulations outlined in VDOT's ''Rules and Regulations Governing the Transportation of Hazardous Materials through Bridge-Tunnel Facilities.'' For additional information, see *http://www.virginiadot.org/info/resources/vdothazmat.pdf*. | 1,2,3,4,5,6,7,8,i |
| 11/12/96 | H | Chesapeake Bay Bridge—Tunnel [Phone: (757) 331–2960]<br>The jurisdiction for this bridge and tunnel falls under the Chesapeake Bay Bridge and Tunnel District, which maintains its own regulations on hazardous materials.].<br>Classes 1.1, 1.2, 1.3, 2.3, 4.3, and 6.1 (Inhalation Hazard only) are not allowed passage in any quantity.<br>Classes 2.1, 2.2, 3, 4.1, 4.2, 5.1, 5.2, 6.1, 7, 8, and 9 are prohibited in limited circumstances.<br>For additional information on route restrictions, see *http://www.cbbt.com/hazmat.html* | 1,2,3,4,5,6,7,8,9,i |

TABLE 6—WYOMING—RESTRICTED HM ROUTES

| Designation date | Route order | Route description | City | County | Restriction(s) (0,1,2,3,4,5,6,7,8,9,i) |
|---|---|---|---|---|---|
| 04/12/94 | A | City of Cheyenne<br>[City Ordinance: Hazardous materials and radioactive materials may not be transported by motor vehicle within the City of Cheyenne except for the purpose of making pickups and/or deliveries within the City, unless such routing is consistent with 49 CFR Part 397 or 49 CFR Part 177.<br>Motor vehicles carrying hazardous and/or radioactive materials which are making local pickups and/or deliveries must be operated over the safest and most direct route to and from the origination and destination point. Such routes shall not pass through residential areas unless there is no practical alternative.]. | Cheyenne | Laramie | 0 |

End of Revisions to the National Hazardous Materials Route Registry

Issued on: August 2, 2018.

**Cathy F. Gautreaux,**

*Deputy Administrator.*

[FR Doc. 2018–17060 Filed 8–8–18; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2018–0008–N–5]**

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** Under the Paperwork Reduction Act of 1995 (PRA), this notice announces that FRA is forwarding the renewal Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On April 26, 2018, FRA published a notice providing a 60-day period for public comment on the ICR.

**DATES:** Interested persons are invited to submit comments on or before September 10, 2018.

**ADDRESSES:** Submit written comments on the ICR to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W33–497, Washington, DC 20590 (Telephone: (202) 493–6292); or Ms. Kim Toone, Information Collection Clearance Officer, Office of Administration, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W34–212, Washington, DC 20590 (Telephone: (202) 493–6132).

**SUPPLEMENTARY INFORMATION:** The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), and 1320.12. On April 26, 2018, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 83 FR 18391. FRA received no comments in response to this notice.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

*Comments are invited on the following ICR regarding:* (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires.

*Title:* Steam Locomotive Inspection and Maintenance Standards (Formerly Steam Locomotive Inspection).

*OMB Control Number:* 2130–0505.

*Abstract:* The Locomotive Boiler Inspection Act (LBIA) of 1911 required each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original LBIA was expanded to cover all steam locomotives and tenders, and all their parts and appurtenances. As amended, this Act requires railroads to inspect and repair steam locomotives to ensure they operate safely. Per the LBIA, the Steam Locomotive Inspection and Maintenance Standards (49 CFR part 230) were established to provide more specific standards that ensure steam locomotive safety. Currently, as amended in 1999, the collection of information for part 230 is used primarily by tourist or historic railroads and by locomotive owners/operators to track steam locomotive service days and show that required inspections and maintenance are complete. The collection of information is also used by FRA and State rail safety inspectors to verify compliance with required inspection and maintenance standards, helping ensure steam locomotives are ''safe and suitable'' for service.

*Type of Request:* Extension without change of a current information collection.

*Affected Public:* Steam Locomotive Owners/Operators.

*Form(s):* FRA–1; FRA–2; FRA–3; FRA–4; FRA–5.

*Total Estimated Annual Responses:* 4,868.

*Total Estimated Annual Burden:* 18,865 hours.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor and a respondent is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

**Juan D. Reyes III,**

*Chief Counsel.*

[FR Doc. 2018–17076 Filed 8–8–18; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Program Guidance for Metropolitan Planning Program and State Planning and Research Program Grants: Availability of Final Circular

**AGENCY:** Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of availability of final circular.

**SUMMARY:** The FTA has placed on its website final guidance in the form of FTA Circular 8100.1D, ''Program Guidance For Metropolitan Planning and State Planning and Research Program Grants.'' The final circular updates the Circular 8100.1C, ''Program Guidance For Metropolitan Planning and State Planning and Research Program Grants,'' to reflect various changes in law and to incorporate provisions of the U.S. Department of Transportation (DOT) regulations, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

**DATES:** September 10, 2018.

**FOR FURTHER INFORMATION CONTACT:** Victor Austin, Office of Planning and

Environment (TPE), Federal Transit Administration, U.S. Department of Transportation, phone: 202–366–2996, or email *victor.austin@dot.gov.* Legal questions may be addressed to Helen Serassio, Office of Chief Counsel (TCC), Federal Transit Administration, U.S. Department of Transportation, phone: 202–366–1974, or email *helen.serassio@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

## Availability of Final Circular

You may download an electronic copy of the circular from FTA's website at *http://www.transit.dot.gov.* Paper copies of the circular may be obtained by calling FTA's Administrative Services Help Desk at 202–366–4865.

## Table of Contents

I. Overview
II. Updates to Circular 8100.1
A. Chapter I—Introduction and Background
B. Chapter II—Metropolitan Planning Program
C. Chapter III—State Planning and Research Programs
D. Chapter IV—Consolidated Planning Grants
E. Chapter V—Application Instructions
F. Appendices

## I. Overview

FTA is updating its Program Guidance for Metropolitan Planning and State Planning and Research Program Grants Circular (Circular) to incorporate changes to FTA's programs resulting from enactment of FTA's most recent authorizing legislation, the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94, Dec. 4, 2015), as well as the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, July 6, 2012); promulgation of Department of Transportation (DOT) regulations, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,'' at 2 CFR part 1201, as well as ''Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning,'' at 23 CFR part 450; and changes in terms as used in FTA's new electronic award and application system, the Transit Award and Management System (TrAMS).

On December 26, 2014, DOT adopted the Office of Management and Budget (OMB) regulatory guidance, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' (Uniform Guidance), 2 CFR part 200, now incorporated by reference in DOT regulations, 2 CFR part 1201. The Uniform Guidance streamlines and adds to the guidance formerly found in eight OMB circulars, which have been superseded by 2 CFR part 200. While 2 CFR part 1201 adopts most of the Uniform Guidance, part 1201 does contain several DOT-specific provisions.

DOT regulations, 2 CFR part 1201, apply to any FTA award and any amendments thereto signed by an authorized FTA official on or after December 26, 2014. These regulations supersede 49 CFR part 18, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' and 49 CFR part 19, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' except that grants and cooperative agreements executed before December 26, 2014, continue to be subject to 49 CFR parts 18 and 19 as in effect on the date of such grants or agreements.

MAP–21 established a performance-based management approach to the statewide and metropolitan transportation planning process to ensure the most efficient investment of Federal transportation funds. Although MAP–21 made several changes to the planning process, the legislation did not make substantive changes to the eligibilities for the Metropolitan Planning Program (MPP). MAP–21 did change the eligibilities of the State Planning and Research Program (SPRP) to include only funds for grants and contracts to carry out 49 U.S.C. 5304, 5305, and 5306.

Sections 5303 and 5304, as amended by the FAST Act, require metropolitan planning organizations (MPOs) and States to develop transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning. Under the FAST Act, MPOs continue to develop Unified Planning Work Programs, Metropolitan Transportation Plans, Transportation Improvement Programs, and Public Participation Plans.

On May 27, 2016, FTA and FHWA published in the **Federal Register** the Final Rule on Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning (81 FR 34049), 23 CFR part 450, to implement the changes to the planning process established by MAP–21 and the FAST Act. This Circular uses the joint regulations at 23 CFR part 450 as the foundation for its program guidance.

In addition to addressing changes to Federal law, the final Circular reflects terminology changes for consistency with FTA's new electronic award and management system, TrAMS.

This notice provides a summary of changes to FTA Circular 8100.1, ''Program Guidance for Metropolitan Planning and State Planning and Research Program Grants.'' Given that this update reflects existing statute and regulations developed with notice and comment, contains no additional interpretation of statute or regulations, and imposes no new requirements on grantees, FTA is not soliciting public comments. The final Circular 8100.1D becomes effective on September 10, 2018 and supersedes Circular 8100.1C.

## II. Updates to Circular 8100.1

### *A. Chapter I—Introduction and Background*

Chapter I covers general information regarding FTA, FTA's authorizing legislation, *Grants.gov*, and how to contact FTA; this chapter also includes definitions and acronyms used in the Circular. In Section 5, FTA added and amended numerous definitions and acronyms to be consistent with other FTA circulars, 49 U.S.C. chapter 53 as amended by the FAST Act and MAP–21, the Uniform Guidance, and TrAMS. For example, TEAM references are replaced by TrAMS references throughout the document. In Section 6, FTA added programmatic changes triggered by MAP–21 and the FAST Act, discussing the performance-based management approach to the statewide and metropolitan transportation planning process.

### *B. Chapter II—Metropolitan Planning Program*

Chapter II provides an overview of the entire MPP with regard to its statutory authority and program goals. It defines the role of the individual States, MPOs, and FTA, and explains the program's relationship to other FTA funded programs. The chapter also provides information on eligible planning activities, steps required in developing a Unified Planning Work Program (UPWP), the MPP assistance formula and notification, the grant agreement, and the administration of MPP grants. In Section 1, FTA added a suggestion that to the extent possible, a single agreement among all responsible parties should be developed. In Section 2, eligible grant activities under the MPP, FTA added ''studies relating to . . . performance-based planning, safety, and transit asset management,'' ''developing and updating the metropolitan planning agreements between the MPO, the State(s), and the providers of public

transportation serving the metropolitan planning area,'' and ''peer reviews and exchanges of . . . performance-based planning.'' FTA removed ''arts and artistic design'' from the list of eligible grant activities to comply with 49 U.S.C. 5323, as amended by the FAST Act. In Section 4, FTA reordered subsections identifying the components of a UPWP. In Section 9, FTA added programs created by MAP–21 and the FAST Act, and removed references to programs repealed by MAP–21 and the FAST Act.

*C. Chapter III—State Planning and Research Program*

Chapter III provides an overview of the SPRP in terms of its statutory authority and program goals, and explains the program's relationship to and coordination with other FTA-funded programs. The chapter also defines the role of the individual States and FTA, and provides information on eligible grant activities, SPRP assistance formula and notification, and State planning activities. In Section 2, FTA removed ''training and educational activities'' and ''human resource program activities'' from the list of eligible grant activities for the SPRP because the statutory basis for their eligibility was removed by MAP–21. In Section 5, FTA added programs created by MAP–21 and the FAST Act, and removed references to programs repealed by MAP–21 and the FAST Act.

*D. Chapter IV—Consolidated Planning Grants*

Chapter IV provides information on the Consolidated Planning Grant (CPG) Program, a program administered by FTA and FHWA. The CPG Program allows FTA and FHWA funding that supports metropolitan and statewide transportation planning to be combined into a single consolidated grant, which fosters a cooperative effort between the Federal agencies and the participating States to streamline the delivery of their planning programs by providing the flexibility to transfer the planning funds to either FTA or FHWA for processing. In Section 1, FTA clarified that FTA funds used for metropolitan planning in a CPG are allowed to have the same match ratio as the FHWA Metropolitan Planning funds.

*E. Chapter V—Application Instructions*

Chapter V details the application process of MPOs and States that apply for and receive funds from MPP and SPRP grants. FTA made no substantive changes to this chapter.

*F. Appendices*

FTA made minor, clarifying edits to the appendices.

Issued in Washington, DC.

**K. Jane Williams,**

*Acting Administrator.*

[FR Doc. 2018–17032 Filed 8–8–18; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2017–0129]**

### Pipeline Safety: Underground Natural Gas Storage Facility User Fee

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of agency action.

**SUMMARY:** On December 8, 2017, PHMSA published a notice and request for comments in the **Federal Register** titled: ''Underground Natural Gas Storage Facility User Fee'' seeking comments from underground natural gas storage facility (UNGS) operators on a proposal to use UNGS annual report data in the user fee rate structure. PHMSA received two comments in the docket. We are publishing this notice to address the comments received and to announce that PHMSA has used UNGS annual report data about the number of wells in the user fee rate structure for the Pipeline Safety Fund's Underground Natural Gas Storage Facility Safety Account.

**FOR FURTHER INFORMATION CONTACT:** Crystal Stewart by telephone at 202–366–1524, by fax at 202–366–4566, by email at *Crystal.Stewart@dot.gov,* or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PHP–2, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) (Pub. L. 99–272, sec. 7005), codified in part at section 60301 of title 49, United States Code, authorizes the assessment and collection of user fees to fund the pipeline safety activities conducted under chapter 601 of title 49. On June 22, 2016, President Obama signed into law the ''Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016'' (Pub. L. 114–183) (PIPES Act of 2016). Section 12 of the PIPES Act of 2016 mandates that PHMSA issue regulations for UNGS facilities, authorizes user fees on operators of these facilities, and directs PHMSA to prescribe procedures to collect those fees upon appropriation. Section 2 of the PIPES Act of 2016 authorizes $8 million per year to be appropriated from those fees for each of FY 2017–2019 for the newly established Underground Natural Gas Storage Facility Safety Account in the Pipeline Safety Fund. After Congress appropriates funds to this account for fiscal year (FY) 2018 and beyond, PHMSA will collect user fees from the operators of the facilities.

**Summary of Comments**

The December 8, 2017 notice advised all UNGS facility operators of a proposed PHMSA pipeline user fee assessment and rate structure (82 FR 58045). During the one-month response period, PHMSA received comments from two commenters on the proposed UNGS user fee billing methodology: WBI Energy Transmission Inc., and National Fuel Gas Supply Corporation.

The comments can be found at *http://www.regulations.gov* in Docket Number PHMSA–2017–0129. WBI Energy Transmission Inc., submitted comments supporting the rate structure proposed by PHMSA in the December 8, 2017 notice. The remaining comment is summarized below with PHMSA's response:

*Comment:* National Fuel Gas Supply Corporation stated that well count alone is not an appropriate measure for determining a user fee since larger wells will require more regulatory oversight than smaller wells.

*Response:* Each well penetrating an underground natural gas storage reservoir represents a risk. Currently, PHMSA intends to apply a consistent level of regulatory oversight to all wells, regardless of size. As PHMSA implements its underground storage inspection program, we may gain insights leading to a user fee methodology more reflective of regulatory oversight effort.

**Underground Natural Gas Storage Facility User Fee Plan**

During the FY 2018 user fee process, PHMSA has used calendar year (CY) 2016 annual report data for gas transmission pipelines, hazardous liquid pipelines, and liquefied natural gas facilities. Using CY 2016 data ensures adequate time to verify annual report data quality and still be able to send user fee assessments promptly after appropriation. PHMSA does not have CY 2016 annual report data for underground natural gas storage facilities. Congress appropriated UNGS funds for FY 2018, and PHMSA has

used the CY 2017 UNGS annual report data to develop the UNGS user fee rate structure for FY 2018. If Congress appropriates UNGS funds for FY 2019, PHMSA plans to use the CY 2017 UNGS annual report data to develop the UNGS user fee rate structure for FY 2019. Specifically, PHMSA will use the number of injection/withdraw wells (section C7) and monitoring/observation wells (section C8) in the rate structure. For the FY 2020 user fee rate structure, PHMSA would use the CY 2018 UNGS annual report data.

For FY 2018, Congress has appropriated $8 million to the Underground Natural Gas Storage Facility Safety Account in the Pipeline Safety Fund. PHMSA has used the following steps to develop the user fee rate structure. PHMSA summed the number of wells from sections C7 and C8 of the annual report for each operator. Once PHMSA determined the number of wells for all UNGS operators, each operator was parsed into one of 10 tiers, based on an ordinal ranking of its well counts compared to other UNGS operators. The operators with the lowest well-count values were placed in tier 1, with the highest operator well-count values in tier 10. The minimum and maximum well counts for each tier were then selected so that an equal number of operators were placed in each tier. This tiered fee structure is designed to place a larger share of the user fee on operators with higher well counts.

Using CY 2017 UNGS annual report data as of May 9, 2018, the following table shows the tier boundaries and user fee for each operator in the tier. When the tier boundary spans two tiers, PHMSA randomly selected operators for the lower tier. For example, four wells is the boundary between Tiers 1 and 2. Seven operators have four wells, but only two operators were randomly selected and placed in Tier 1. The remaining five operators with four wells were placed in Tier 2.

| Tier | Amount (% of total) | Tier boundaries | Number of operators | User fee per operator |
|---|---|---|---|---|
| 1 | $160,000 (2%) | 4 wells or less | 13 | $12,308 |
| 2 | $320,000 (4%) | 4 to 7 wells | 13 | 24,615 |
| 3 | $400,000 (5%) | 7 to 12 wells | 13 | 30,769 |
| 4 | $480,000 (6%) | 13 to 19 wells | 13 | 36,923 |
| 5 | $640,000 (8%) | 19 to 27 wells | 13 | 49,231 |
| 6 | $800,000 (10%) | 28 to 45 wells | 13 | 61,538 |
| 7 | $960,000 (12%) | 46 to 68 wells | 13 | 73,846 |
| 8 | $1,040,000 (13%) | 69 to 100 wells | 12 | 86,667 |
| 9 | $1,200,000 (15%) | 101 to 377 wells | 12 | 100,000 |
| 10 | $2,000,000 (25%) | 378 wells or more | 12 | 166,667 |

In summary, PHMSA has used UNGS annual report data about the number of wells in the FY 2018 user fee rate structure for the Pipeline Safety Fund's Underground Natural Gas Storage Facility Safety Account. In future years, the final tier boundaries and user fee per operator may differ slightly from those listed above based on the annual report data at the time the rate structure is established.

Issued in Washington, DC, on August 3, 2018, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2018–17053 Filed 8–8–18; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2018–0078]**

### Pipeline Safety: Information Collection Activities, Revision to OPID Assignment Request and National Registry Notification

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** PHMSA is preparing to request Office of Management and Budget (OMB) approval for the revision of the Operator Assignment Request (PHMSA F 1000.1) and National Registry Notification (PHMSA F 1000.2) currently approved under OMB control number 2137–0627. PHMSA proposes revising certain parts of the forms and instructions. In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on the proposed revisions.

**DATES:** Interested persons are invited to submit comments on or before October 9, 2018.

**ADDRESSES:** Comments may be submitted in the following ways:

*E-Gov Website: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

*Fax:* 1–202–493–2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

*Hand Delivery:* Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

*Instructions:* Identify the docket number, PHMSA–2018–0078, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19476) or visit *http://www.regulations.gov* before submitting any such comments.

*Docket:* For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: Comments on: PHMSA–2018–0078.'' The docket clerk will date stamp the postcard prior to returning it

to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

**FOR FURTHER INFORMATION CONTACT:** Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

## A. Background

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection revision request PHMSA will be submitting to OMB for approval.

## B. OPID Assignment Request

PHMSA intends to revise the OPID Assignment Request (PHMSA F 1000.1) form and its instructions. PHMSA proposes adding ''Underground Natural Gas Storage'' as an additional facility type in step 2 of the form. During fiscal year 2018, PHMSA began partnering with state agencies to inspect and enforce PHMSA regulations for underground natural gas storage facilities. Adding ''Underground Natural Gas Storage'' as an additional facility type is essential for routing the request to the proper state agency.

PHMSA proposes collecting the state and number of miles when a request includes liquefied petroleum gas (LPG) facilities serving fewer than 100 customers from a single source. Collecting the state for LPG facilities is crucial to determining which PHMSA region or state agency should receive the request.

There are eight safety programs in step 3 of the request, but only three apply to underground natural gas storage facilities. PHMSA proposes modifying step 3 to indicate the safety programs required for underground natural gas storage facilities.

PHMSA proposes modifying the instructions to explain PHMSA's past actions for small LPG and master meter operators and future expectations for these operators. Adding this information to the instructions would provide clarity for operators and state agencies inspecting the operators.

## C. National Registry Notification

PHMSA intends to revise the National Registry Notification form (PHMSA F 1000.2) and its instructions. PHMSA proposes changing the name of the form from ''Operator Registry Notification'' to ''National Registry Notification'' to match the wording of the PHMSA regulations requiring the notifications.

PHMSA proposes adding ''Underground Natural Gas Storage'' as an additional facility type in steps 1 and 3 of the form. During fiscal year 2018, PHMSA began partnering with additional state agencies to inspect and enforce PHMSA regulations for underground natural gas storage facilities. Adding ''Underground Natural Gas Storage'' as an additional facility type is essential for routing the notification to the proper state agency.

There are eight safety programs in a type C notification, but only three apply to underground natural gas storage facilities. PHMSA proposes modifying the type C portion of the form to indicate the safety programs required for underground natural gas storage facilities.

Operators report various types of construction projects to PHMSA in type F notifications. PHMSA proposes adding a single-select field to describe the main purpose of the construction project.

The type J notification section assumes that all LNG construction builds new facilities. PHMSA proposes modifying the type J section to recognize that a notification may be submitted for rehabilitation or replacement of LNG facilities.

In step 3 of the form, PHMSA collects data about the location of the facilities covered by the notification. When the notification covers onshore gas gathering, gas transmission, or hazardous liquid pipelines, step 3 data includes the county(ies) for the pipelines. PHMSA uses this county data to associate the notification to a specific portion of the operator's pipeline system. When the notification covers onshore gas gathering, gas transmission, hazardous liquid facilities, or offshore pipelines or facilities, county data is not collected. PHMSA proposes modifying the form to collect county data for onshore gas gathering, gas transmission, and hazardous liquid facilities, and offshore pipelines and facilities. This change would allow PHMSA to associate each notification to a specific portion of the operator's pipeline system.

## D. Summary of Impacted Collections

The following information is provided below for the impacted information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA requests comments on the following information collection:

*Title:* National Registry of Pipeline and Liquefied Natural Gas Operators.

*OMB Control Number:* 2137–0627.

*Current Expiration Date:* 7/31/2020.

*Type of Request:* Revision.

*Abstract:* The National Registry of Pipeline and LNG Operators serves as the storehouse for the reporting requirements for an operator regulated or subject to reporting requirements under 49 CFR part 192, 193, or 195. This registry incorporates the use of two forms: (1) OPID Assignment Request (PHMSA F 1000.1) and (2) National Registry Notification (PHMSA F 1000.2). The burden estimate for this information collection is increasing by 10 responses and 10 burden hours to account for PHMSA F 1000.2 Part F notifications.

*Affected Public:* Operators of Pipeline Facilities.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 689.

*Total Annual Burden Hours:* 689.

*Frequency of Collection:* On occasion.

Comments are invited on:

(a) The need for the proposed collection of information, including whether the information will have practical utility in helping the agency to achieve its pipeline safety goals;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC on August 3, 2018, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2018–17052 Filed 8–8–18; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Joint Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, September 27, 2018.

**FOR FURTHER INFORMATION CONTACT:** Lisa Billups at 1–888–912–1227 or (214) 413–6523.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, September 27, 2018, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact Lisa Billups at 1–888–912–1227 or (214) 413–6523, or write TAP Office 1114 Commerce Street, Dallas, TX 75242–1021, or post comments to the website: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: August 1, 2018.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2018–17014 Filed 8–8–18; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, September 11, 2018.

**FOR FURTHER INFORMATION CONTACT:** Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Tuesday, September 11, 2018, at 3:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: August 1, 2018.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2018–17003 Filed 8–8–18; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, September 12, 2018.

**FOR FURTHER INFORMATION CONTACT:** Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, September 12, 2018, at 2:00 p.m., Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: August 1, 2018.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2018–17013 Filed 8–8–18; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, September 18, 2018.

**FOR FURTHER INFORMATION CONTACT:** Antoinette Ross at 1–888–912–1227 or (202) 317–4110.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Tuesday, September 18, 2018, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Antoinette Ross. For more information please contact: Antoinette Ross at 1–888–912–1227 or (202) 317–4110, or

write TAP Office, 1111 Constitution Avenue NW, Room 1509, National Office, Washington, DC 20224, or contact us at the website: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: August 1, 2018.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2018–17011 Filed 8–8–18; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, September 12, 2018.

**FOR FURTHER INFORMATION CONTACT:** Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Special Projects Committee will be held Wednesday, September 12, 2018, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

The agenda will include a discussion on various special topics with IRS processes.

Dated: August 1, 2018.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2018–17016 Filed 8–8–18; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** The Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will conduct an open meeting and will solicit public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, September 18, 2018.

**FOR FURTHER INFORMATION CONTACT:** Gilbert Martinez at 1–888–912–1227 or (737) 800–4060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, September 18, 2018, at 4:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Gilbert Martinez. For more information please contact Gilbert Martinez at 1–888–912–1227 or 214–413–6523, or write TAP Office 3651 S. IH–35, STOP 1005 AUSC, Austin, TX 78741, or post comments to the website: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: August 1, 2018.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2018–17012 Filed 8–8–18; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, September 13, 2018.

**FOR FURTHER INFORMATION CONTACT:** Otis Simpson at 1–888–912–1227 or 202–317–3332.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Thursday, September 13, 2018, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact Otis Simpson at 1–888–912–1227 or 202–317–3332, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues. For more information please contact Otis Simpson at 1–888–912–1227 or 202–317–3332, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: August 1, 2018.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

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Part II

## Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Guidance Regarding the Transition Tax Under Section 965 and Related Provisions; Proposed Rule

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–104226–18]**

**RIN 1545–BO51**

## Guidance Regarding the Transition Tax Under Section 965 and Related Provisions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations implementing section 965 of the Internal Revenue Code (''Code'') as amended by the Tax Cuts and Jobs Act, which was enacted on December 22, 2017. The proposed regulations would affect United States persons with direct or indirect ownership interests in certain foreign corporations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by October 9, 2018.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–104226–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–104226–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–104226–18).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations under §§ 1.962–1 and 1.962–2, 1.965–1 through 4, 1.965–7 through 9, and 1.986(c)–1, Leni C. Perkins at (202) 317–6934; concerning the proposed regulations under §§ 1.965–5 and 1.965–6, Karen J. Cate at (202) 317–6936; concerning submissions of comments and requests for a public hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 9, 2018.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the duties of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (including underlying assumptions and methodology);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

The collections of information in these proposed regulations are in proposed §§ 1.965–2(d)(2)(ii)(B), 1.965–2(f)(2)(iii)(B), 1.965–3(b)(2), 1.965–3(c)(3), 1.965–4(b)(2)(i), 1.965–7(b)(2), 1.965–7(b)(3)(iii)(B), 1.965–7(c)(2), 1.965–7(c)(3)(iv)(B), 1.965–7(c)(3)(v)(D), 1.965–7(c)(6)(i), 1.965–7(d)(3), 1.965–7(e)(2), 1.965–7(f)(5), and 1.965–8(c). The information is required to be provided by taxpayers that make an election or rely on taxpayer-favorable rules. The information provided will be used by the IRS for tax compliance purposes.

*Estimated total annual reporting burden:* 500,000 hours.

*Estimated average annual burden hours per respondent:* Five hours.

*Estimated number of respondents:* 100,000.

*Estimated annual frequency of responses:* Once.

The number of respondents estimate is a rough estimate of the number of taxpayers completing the relevant parts of tax forms. The estimate of five hours per response is intended to capture the burden in gathering the required information for the election to determine the post-1986 earnings and profits and allocation of deficits and transfer agreements. In addition, the IRS intends that information collection requirements relating to the reporting and payment of tax under section 965 will be set forth in forms and instructions. For purposes of the Paperwork Reduction Act, the reporting burden associated with that collection of information will be reflected in the OMB Form 83–I, Paperwork Reduction Act Submission, associated with those forms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

#### I. In General

This document contains proposed amendments to 26 CFR part 1 under sections 962, 965, and 986 (the ''proposed regulations''). As amended by section 14103 of the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the ''Act''), section 965 applies in the case of the last taxable year of a deferred foreign income corporation (''DFIC'') that begins before January 1, 2018. The Department of the Treasury (''Treasury Department'') and the IRS have previously issued guidance announcing regulations intended to be issued under section 965. *See* Notice 2018–07, 2018–4 I.R.B. 317; Notice 2018–13, 2018–6 I.R.B. 341; and Notice 2018–26, 2018–16 I.R.B. 480 (collectively, the ''notices''); *see also* Rev. Proc. 2018–17, 2018–9 I.R.B. 384. The proposed regulations contain the rules related to section 965 described in the notices, with certain modifications, as well as additional guidance related to section 965.

#### II. Section 965

*A. Treatment of Accumulated Post-1986 Deferred Foreign Income as Subpart F Income*

Section 965(a) provides that for the last taxable year of a DFIC (as defined in Part II.F of this Background section) that begins before January 1, 2018 (such year of the DFIC, the ''inclusion year''), the subpart F income of the corporation (as otherwise determined for such taxable year under section 952) shall be increased by the greater of (i) the accumulated post-1986 deferred foreign income (as defined in Part II.F of this

Background section) of such corporation determined as of November 2, 2017, or (ii) the accumulated post-1986 deferred foreign income of such corporation determined as of December 31, 2017 (each such date, an ''E&P measurement date''). The greater of those two amounts is the ''section 965(a) earnings amount.''

*B. Determination of United States Shareholder's Section 965(a) Inclusion*

Section 965(b)(1) provides that, if a taxpayer is a United States shareholder with respect to at least one DFIC and at least one E&P deficit foreign corporation (as defined in Part II.C of this Background section), then the portion of the section 965(a) earnings amount which would otherwise be taken into account under section 951(a)(1) by a United States shareholder with respect to each DFIC is reduced by the amount of such United States shareholder's aggregate foreign E&P deficit (as defined in Part II.C of this Background section) that is allocated to such DFIC. The portion of the section 965(a) earnings amount that is taken into account under section 951(a)(1) by a United States shareholder, after the reduction described in the preceding sentence and, as applicable, the reduction described in Part II.D of this Background section, is referred to as the ''section 965(a) inclusion amount.''

*C. Allocation of Aggregate Foreign E&P Deficit and Definition of E&P Deficit Foreign Corporation*

The aggregate foreign E&P deficit of any United States shareholder is allocated to each DFIC of the United States shareholder in an amount that bears the same proportion to such aggregate as (i) the United States shareholder's pro rata share of the section 965(a) earnings amount of the DFIC bears to (ii) the aggregate of the United States shareholder's pro rata shares of the section 965(a) earnings amounts of all DFICs of the United States shareholder. Section 965(b)(2). The term ''aggregate foreign E&P deficit'' means, with respect to any United States shareholder, the lesser of (A) the aggregate of the shareholder's pro rata shares of the specified E&P deficits of the E&P deficit foreign corporations of the shareholder or (B) the aggregate of the shareholder's pro rata shares of the section 965(a) earnings amounts of all DFICs of the shareholder. Section 965(b)(3)(A)(i).

The term ''E&P deficit foreign corporation'' means, with respect to any taxpayer, any specified foreign corporation (as defined in Part II.G of this Background section) with respect to which the taxpayer is a United States shareholder, if, as of November 2, 2017, (i) the specified foreign corporation had a deficit in post-1986 earnings and profits (as defined in Part II.F of this Background section), (ii) the corporation was a specified foreign corporation, and (iii) the taxpayer was a United States shareholder of the corporation. Section 965(b)(3)(B). The term ''specified E&P deficit'' means, with respect to an E&P deficit foreign corporation, the amount of the E&P deficit foreign corporation's deficit in post-1986 earnings and profits as of November 2, 2017. *See* section 965(b)(3)(C).

For purposes of applying section 959 in any taxable year beginning with the inclusion year, with respect to any United States shareholder of a DFIC, an amount equal to the reduction in the shareholder's pro rata share of the section 965(a) earnings amount of the DFIC by reason of the aggregate foreign E&P deficit allocated to such DFIC is treated as an amount which was included in the gross income of such United States shareholder under section 951(a). Section 965(b)(4)(A). With respect to any taxable year beginning with the inclusion year, a United States shareholder's pro rata share of the earnings and profits (''E&P'') of any E&P deficit foreign corporation is increased by the amount of the specified E&P deficit of the E&P deficit foreign corporation taken into account by the shareholder, and, for purposes of section 952, the increase is attributable to the same activity to which the deficit taken into account was attributable. Section 965(b)(4)(B).

*D. Aggregate Unused E&P Deficit*

Under section 965(b)(5), in the case of any affiliated group which includes at least one E&P net surplus shareholder and one E&P net deficit shareholder, the amount which would (but for section 965(b)(5)) be taken into account under section 951(a)(1) by reason of section 965(a) by each E&P net surplus shareholder is reduced (but not below zero) by such shareholder's applicable share of the affiliated group's aggregate unused E&P deficit.

The term ''affiliated group'' has the meaning provided in section 1504. The term ''E&P net surplus shareholder'' means any United States shareholder which would (but for section 965(b)(5)) take into account a section 965(a) inclusion amount greater than zero. Section 965(b)(5)(B). The term ''E&P net deficit shareholder'' means any United States shareholder if (i) the aggregate foreign E&P deficit with respect to such shareholder (as defined in section 965(b)(3)(A) without regard to clause (i)(II) thereof, which limits the aggregate foreign E&P deficit of a United States shareholder to the aggregate of the United States shareholder's pro rata share of the section 965(a) earnings amount of all DFICs of the United States shareholder) exceeds (ii) the amount that would (but for section 965(b)(5)) be taken into account by such shareholder under section 951(a)(1) by reason of section 965(a) (the excess, the ''excess aggregate foreign E&P deficit''). Section 965(b)(5)(C). The term ''applicable share'' means, with respect to any E&P net surplus shareholder in any affiliated group, the amount which bears the same proportion to the group's aggregate unused E&P deficit as (i) the product of (A) the shareholder's group ownership percentage, multiplied by (B) the section 965(a) inclusion amount which would otherwise be taken into account by a United States shareholder, bears to (ii) the aggregate amount determined under clause (i) with respect to all E&P net surplus shareholders in the group. Section 965(b)(5)(E). The term ''aggregate unused E&P deficit'' means, with respect to any affiliated group, the lesser of (i) the sum of the excess aggregate foreign E&P deficits determined with respect to each E&P net deficit shareholder in such affiliated group, or (ii) with respect to all E&P net surplus shareholders in the group, the aggregate of the product of (A) the shareholder's group ownership percentage, multiplied by (B) the amount which would (but for section 965(b)(5)) be taken into account under section 951(a)(1) by reason of section 965(a) by the shareholder. Section 965(b)(5)(D).

*E. Application of the Participation Exemption*

Section 965(c)(1) provides that there shall be allowed as a deduction for the taxable year of a United States shareholder in which a section 965(a) inclusion amount is included in the gross income of the United States shareholder an amount equal to the sum of (i) the United States shareholder's 8 percent rate equivalent percentage (as defined in section 965(c)(2)(A)) of the excess (if any) of (A) the section 965(a) inclusion amount, over (B) the amount of such United States shareholder's aggregate foreign cash position, plus (ii) the United States shareholder's 15.5 percent rate equivalent percentage (as defined in section 965(c)(2)(B)) of so much of the United States shareholder's aggregate foreign cash position as does not exceed the section 965(a) inclusion amount. The amount of the deduction allowed under section 965(c) to a United States shareholder as described in the preceding sentence is referred to

as the ''section 965(c) deduction amount.''

Section 965(c)(3)(A) provides that the term ''aggregate foreign cash position'' means, with respect to any United States shareholder, the greater of (i) the aggregate of the United States shareholder's pro rata share of the cash position of each specified foreign corporation of the United States shareholder determined as of the close of the last taxable year of the specified foreign corporation that begins before January 1, 2018, or (ii) one half of the sum of (A) the aggregate described in clause (i) determined as of the close of the last taxable year of each specified foreign corporation that ends before November 2, 2017, plus (B) the aggregate described in clause (i) determined as of the close of the taxable year of each specified foreign corporation which precedes the taxable year referred to in subclause (A). Each date referred to in the preceding sentence is referred to as a ''cash measurement date.''

The cash position of any specified foreign corporation is the sum of (i) cash held by the corporation, (ii) the net accounts receivable of the corporation, and (iii) the fair market value of the following assets held by the corporation (each asset, a ''cash-equivalent asset''): (A) Personal property which is of a type that is actively traded and for which there is an established financial market (''actively traded property''); (B) commercial paper, certificates of deposit, the securities of the Federal government and of any State or foreign government; (C) any foreign currency; (D) any obligation with a term of less than one year (''short-term obligation''); and (E) any asset which the Secretary identifies as being economically equivalent to any asset described in section 965(c)(3)(B). Section 965(c)(3)(B). Also, for purposes of section 965(c), the term ''net accounts receivable'' means, with respect to any specified foreign corporation, the excess (if any) of (i) the corporation's accounts receivable, over (ii) the corporation's accounts payable (determined consistent with the rules of section 461). Section 965(c)(3)(C).

Section 965(c)(3)(D) provides that net accounts receivable, actively traded property, and short-term obligations shall not be taken into account by a United States shareholder in determining its aggregate foreign cash position to the extent that the United States shareholder demonstrates to the satisfaction of the Secretary that the amount of the net accounts receivable, actively traded property, or short-term obligations is taken into account by the United States shareholder with respect to another specified foreign corporation.

Section 965(c)(3)(E) provides that an entity (other than a corporation) will be treated as a specified foreign corporation of a United States shareholder for purposes of determining the United States shareholder's aggregate foreign cash position if any interest in the entity is held by a specified foreign corporation of the United States shareholder (determined after application of the rule in this sentence) and the entity, if it were a foreign corporation, would be a specified foreign corporation of the United States shareholder.

Section 965(c)(3)(F) provides that if the Secretary determines that a principal purpose of any transaction was to reduce the aggregate foreign cash position taken into account under section 965(c), the transaction shall be disregarded for purposes of section 965(c).

*F. Definition of DFIC and Accumulated Post-1986 Deferred Foreign Income*

For purposes of section 965, a DFIC is, with respect to any United States shareholder, any specified foreign corporation of the United States shareholder that has accumulated post-1986 deferred foreign income greater than zero as of an E&P measurement date. Section 965(d)(1). The term ''accumulated post-1986 deferred foreign income'' means the post-1986 earnings and profits of the specified foreign corporation except to the extent such E&P (i) are attributable to income of the specified foreign corporation that is effectively connected with the conduct of a trade or business within the United States and subject to tax under chapter 1, or (ii) in the case of a controlled foreign corporation (''CFC''), if distributed, would be excluded from the gross income of a United States shareholder under section 959 (''previously taxed E&P''). Section 965(d)(2). Section 965(d)(3) provides that the term ''post-1986 earnings and profits'' means the E&P of the foreign corporation (computed in accordance with sections 964(a) and 986, and by taking into account only periods when the foreign corporation was a specified foreign corporation) accumulated in taxable years beginning after December 31, 1986, and determined (i) as of the E&P measurement date that is applicable with respect to such foreign corporation, and (ii) without diminution by reason of dividends distributed during the last taxable year of the foreign corporation that begins before January 1, 2018, other than dividends distributed to another specified foreign corporation.

*G. Specified Foreign Corporations and United States Shareholders*

Section 965(e)(1) provides that the term ''specified foreign corporation'' means (i) any CFC (regardless of whether there is a domestic corporate shareholder) and (ii) any foreign corporation with respect to which one or more domestic corporations is a United States shareholder (''10-percent corporation''). However, if a passive foreign investment company (as defined in section 1297) (''PFIC'') with respect to the shareholder is not a CFC, then such corporation is not a specified foreign corporation. Section 965(e)(3). An S corporation is treated as a partnership for purposes of sections 951 through 965. *See* section 1373(a). For purposes of sections 951 and 961, a 10-percent corporation is treated as a CFC solely for purposes of taking into account the subpart F income of such corporation under section 965(a) (and for purposes of determining a United States shareholder's pro rata share of any amount with respect to a specified foreign corporation under section 965(f)). Section 965(e)(2).

For taxable years of foreign corporations beginning before January 1, 2018, under section 951(b), a United States shareholder is a United States person (within the meaning of section 957(c)) that owns within the meaning of section 958(a), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the stock of a foreign corporation. Under section 957(c), a United States person generally has the meaning assigned to it by section 7701(a)(30), which includes a domestic partnership or domestic trust. *But see* Notice 2010–41, 2010–22 I.R.B. 715 (announcing that the Treasury Department and the IRS intend to issue regulations treating certain domestic partnerships as foreign partnerships for purposes of identifying which United States shareholders are required to include amounts in gross income under section 951(a)). Special rules under section 957(c) and § 1.957–3 apply in determining when individuals residing in certain possessions or territories of the United States are considered United States persons for purposes of sections 951 and 965.

*H. Determination of Pro Rata Share*

Section 965(f)(1) provides that the determination of any United States shareholder's pro rata share of any

amount with respect to any specified foreign corporation shall be determined under rules similar to the rules of section 951(a)(2) by treating the amount in the same manner as subpart F income (and by treating the specified foreign corporation as a CFC).

*I. Special Rules for Domestic Pass-Through Entities*

Section 965(f)(2) provides that the portion that is included in the income of a United States shareholder under section 951(a)(1) by reason of section 965(a) that is equal to the section 965(c) deduction amount by reason of the inclusion is treated as income exempt from tax for purposes of sections 705(a)(1)(B) and 1367(a)(1)(A) but not treated as income exempt from tax for purposes of determining whether an adjustment is made to an accumulated adjustments account (''AAA'') of an S corporation under section 1368(e)(1)(A).

*J. Foreign Tax Credit and Deduction*

Section 965(g)(1) provides that no credit is allowed under section 901 for the applicable percentage of any taxes paid or accrued (or treated as paid or accrued) with respect to any amount for which a section 965(c) deduction is allowed.

The term ''applicable percentage'' means the amount (expressed as a percentage) equal to the sum of the following two amounts:

(i) 0.771 multiplied by the ratio of (A) the section 965(a) inclusion amount in excess of the United States shareholder's aggregate foreign cash position divided by (B) the section 965(a) inclusion amount, and

(ii) 0.557 multiplied by the ratio of (A) the amount of the section 965(a) inclusion amount equal to the United States shareholder's aggregate cash position, divided by (B) the section 965(a) inclusion amount.

Further, no deduction is allowed for any tax for which credit is not allowable under section 901 by reason of section 965(g)(1) (determined by treating the taxpayer as having elected the benefits of subpart A of part III of subchapter N).

With respect to the taxes treated as paid or accrued by a domestic corporation with respect to the section 965(a) inclusion amount, section 78 applies only to so much of such taxes as bears the same proportion to the amount of the taxes as (i) the excess of (A) the section 965(a) inclusion amount, over (B) the section 965(c) deduction amount with respect to such amount, bears to (ii) the section 965(a) inclusion amount.

*K. Election Under Section 965(h) Concerning Payment of Net Tax Liability Under Section 965*

Section 965(h)(1) provides that in the case of a United States shareholder of a DFIC, the United States shareholder may elect to pay the net tax liability under section 965 in eight installments. Section 965(h)(6) defines the net tax liability under section 965 with respect to any United States shareholder as the excess (if any) of (i) the taxpayer's net income tax for the taxable year in which an amount is included in the gross income of the United States shareholder under section 951(a)(1) by reason of section 965, over (ii) the taxpayer's net income tax for such taxable year determined (A) without regard to section 965, and (B) without regard to any income or deduction properly attributable to a dividend received by the United States shareholder from any DFIC. For this purpose, the term ''net income tax'' means the regular tax liability reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A. Section 965(h)(6)(B).

Section 965(h)(2) provides that if a taxpayer makes an election under section 965(h), the first installment is due on the due date (without regard to extensions) for the return of tax for the inclusion year. Each successive installment is due on the due date (without regard to extensions) for the return of tax for the taxable year following the taxable year for which the previous installment payment was made.

Section 965(h)(3) provides that if there is an addition to tax for failure to timely pay an installment required under section 965(h), a liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), a cessation of business by the taxpayer, or any similar circumstance, the unpaid portion of the remaining installments will be due on the date of such event (or in the case of a title 11 or similar case, the day before the petition is filed). The preceding sentence does not apply in the case of the sale of substantially all the assets of a taxpayer to a buyer if the buyer enters into an agreement with the Secretary under which the buyer is liable for the remaining installments due under section 965(h) in the same manner as if the buyer were the taxpayer.

Section 965(h)(4) provides that if a taxpayer has made an election under section 965(h), and subsequently, a deficiency is assessed with respect to the taxpayer's net tax liability for purposes of section 965(h), then the amount of the deficiency will be prorated among the installments. The part of the deficiency prorated to any installment the date for payment of which has not arrived will be collected at the same time as, and as part of, such installment. The part of the deficiency prorated to any installment the date for payment of which has arrived must be paid upon notice and demand from the Secretary. However, the proration rule does not apply if the deficiency is due to negligence, intentional disregard of rules and regulations, or fraud with intent to evade tax.

*L. Election Under Section 965(i) Concerning Payment of Net Tax Liability Under Section 965 by an S Corporation Shareholder and Related Reporting Requirements*

Section 965(i)(1) provides that in the case of any S corporation that is a United States shareholder of a DFIC, each shareholder of the S corporation may elect to defer payment of the shareholder's net tax liability under section 965 with respect to the S corporation until the shareholder's taxable year which includes the triggering event with respect to such liability.

Under section 965(i)(1), any net tax liability, payment of which is deferred under section 965(i)(1), will be assessed on the return of tax as an addition to tax for the shareholder's taxable year which includes the triggering event with respect to such liability. As defined in section 965(i)(2), in the case of any shareholder's net tax liability under section 965 with respect to any S corporation, the triggering event with respect to such liability is whichever of the following occurs first: (i) The corporation ceases to be an S corporation (determined as of the first day of the first taxable year that the corporation is not an S corporation); (ii) a liquidation or sale of substantially all the assets of the S corporation (including in a title 11 or similar case), a cessation of business by the S corporation, the S corporation ceases to exist, or any similar circumstance; or (iii) a transfer of any share of stock in the S corporation by the taxpayer (including by reason of death, or otherwise). In the case of a transfer of less than all of the taxpayer's shares of stock in the S corporation, the transfer is only a triggering event with respect to the portion of the taxpayer's net tax liability under section 965 with respect to the S corporation as is properly allocable to the transferred stock. Section 965(i)(2)(B). Moreover, a transfer of stock in the S corporation is not a triggering event if the transferee enters into an agreement with the

Secretary under which the transferee is liable for the net tax liability under section 965 with respect to the stock in the same manner as if such transferee were the taxpayer. Section 965(i)(2)(C).

If a triggering event occurs, section 965(i)(4) permits a taxpayer to make an election under section 965(h) with respect to the liability to which the section 965(i) election applied by the due date for the return of tax for the taxable year in which the triggering event occurred, and the first installment under section 965(h) must also be paid by the due date (without regard to extensions) for the return for the taxable year of the triggering event. However, the election may only be made with the consent of the Secretary in the case of a triggering event that is a liquidation or sale of substantially all of the assets of the S corporation. *See* section 965(i)(4)(D).

Section 965(i)(3) defines a shareholder's net tax liability under section 965 with respect to any S corporation as the net tax liability under section 965 which would be determined under section 965(h)(6) if the only amounts taken into account by the shareholder under section 951(a)(1) by reason of section 965 were allocations from the S corporation.

Section 965(i)(5) provides that if any shareholder of an S corporation makes an election under section 965(i) to defer payment of its net tax liability under section 965 with respect to an S corporation, the S corporation is jointly and severally liable for the deferred payment and any penalty, addition to tax, or additional amount attributable thereto.

Section 965(i)(6) provides that any limitation on the time period for the collection of a liability deferred under section 965(i) is not treated as beginning before the date of the triggering event with respect to such liability.

Section 965(i)(7) requires any shareholder of an S corporation that makes an election under section 965(i) to report the amount of the shareholder's deferred net tax liability on the shareholder's return of tax for the taxable year for which the election is made and on the return of tax for each taxable year thereafter until the amount has been fully assessed. ''Deferred net tax liability'' means the amount of net tax liability under section 965 payment of which has been deferred under section 965(i) and which has not been assessed on a return of tax for any prior taxable year. Section 965(i)(7)(B). In the case of any failure to report any amount required to be reported pursuant to section 965(i)(7) with respect to any taxable year before the due date for the return of tax for the taxable year, there will be assessed on the return as an addition to tax 5 percent of such amount. Section 965(i)(7)(C).

*M. Election Under Section 965(m) Concerning Inclusions of Amounts Under Section 965 and Related Provisions*

Under section 965(m)(1)(B), a real estate investment trust (REIT) that is a United States shareholder of a DFIC may elect, in lieu of including any amount required to be taken into account under section 951(a)(1) by reason of section 965 in the taxable year in which it would otherwise be included in gross income (for purposes of the computation of REIT taxable income under section 857(b)), to include such amount in gross income in eight installments.

If this election is made, the REIT's aggregate section 965(c) deduction must be determined without regard to the election and allocated to each taxable year for which an installment is included in the same proportion as the amount of the installment included in gross income. *See* section 965(m)(2)(B)(i)(II). Furthermore, the REIT may not make a section 965(h) election for any taxable year for which an installment is included. *See* section 965(m)(2)(B)(i)(III). Under section 965(m)(2)(B)(ii), if there is a liquidation or sale of substantially all the assets of the REIT (including in a title 11 or similar case), a cessation of business by the trust, or any similar circumstance, then any amount not yet included in gross income will be included in gross income as of the day before the date of the event, and the unpaid portion of any tax liability with respect to the inclusion will be due on the date of the event (or in the case of a title 11 or similar case, the day before the petition is filed).

Section 965(m)(1)(A) provides that any amount required to be taken into account under section 951(a)(1) by reason of section 965 by a REIT that is a United States shareholder of a DFIC is not taken into account as gross income of the REIT for purposes of applying paragraphs (2) and (3) of section 856(c) to any taxable year for which the amount is taken into account under section 951(a)(1).

*N. Election Under Section 965(n) Not To Apply Net Operating Loss Deduction*

Under section 965(n)(1), a United States shareholder of a DFIC may make an election pursuant to which the amount described in section 965(n)(2) shall not be taken into account (i) in determining the amount of the shareholder's net operating loss (''NOL'') deduction under section 172 for the taxable year, or (ii) in determining the amount of taxable income for the taxable year which may be reduced by NOL carryovers or carrybacks to the taxable year under section 172. The amount described in section 965(n)(2) is the sum of (i) the amount required to be taken into account under section 951(a)(1) by reason of section 965 (determined after the application of section 965(c)), plus (ii) in the case of a domestic corporation which chooses to have the benefits of subpart A of part III of subchapter N for the taxable year, the taxes deemed to be paid by the corporation under subsections (a) and (b) of section 960 for the taxable year with respect to the amount described in section 965(n)(2)(A) which are treated as a dividend under section 78.

*O. Recapture for Expatriated Entities*

Section 965(l) provides that if a section 965(c) deduction is allowed to a United States shareholder and the shareholder first becomes an expatriated entity (as defined under section 7874(a)(2), except not including an entity if the surrogate foreign corporation with respect to it is treated as a domestic corporation under section 7874(b)) at any time during the 10-year period beginning on the date of the enactment of the Act (with respect to a surrogate foreign corporation (as defined under section 7874(a)(2)(B)) that first becomes a surrogate foreign corporation during such period), the tax imposed under chapter 1 will be increased for the first taxable year in which such taxpayer becomes an expatriated entity by an amount equal to 35 percent of the amount of the section 965(c) deduction, and no credits will be allowed against such increase in tax.

*P. Regulations or Other Guidance*

Section 965(o) provides that the Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of section 965, including regulations or other guidance to provide appropriate basis adjustments and regulations or other guidance to prevent the avoidance of the purposes of section 965, including through a reduction in E&P, changes in entity classification or accounting methods, or otherwise.

**III. Other Provisions**

*A. Section 962*

As amended by the Act, section 962 provides that an individual who is a United States shareholder may elect to

have the tax imposed under chapter 1 on amounts that are included in the individual's gross income under section 951(a) be an amount equal to the tax that would be imposed under section 11 if the amounts were received by a domestic corporation. In addition, if an election is made under section 962, the amounts included in the individual's gross income under section 951(a) are treated as if they were received by a domestic corporation for purposes of applying section 960 (relating to foreign tax credits). *See* § 1.962–1(a). However, the taxable income determined for purposes of applying section 11 is not reduced by any deduction of the United States shareholder. *See* § 1.962–1(b)(1)(i). An election under section 962 does not affect tax imposed under other chapters, including under chapter 2A.

*B. Attribution Rules in Sections 958(b) and 318(a)*

Section 958 provides rules for determining direct, indirect, and constructive stock ownership. Under section 958(a)(1), stock is considered owned by a person if it is owned directly or is owned indirectly through certain foreign entities under section 958(a)(2). Under section 958(b), section 318 applies, with certain modifications, to the extent that the effect is to treat any United States person as a United States shareholder within the meaning of section 951(b), to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a United States shareholder of a CFC for purposes of section 956(c)(2), or to treat a foreign corporation as a CFC under section 957.

Section 318 provides rules that attribute the ownership of stock to certain family members, between certain entities and their owners, and to holders of options to acquire stock. Section 318(a)(1) provides rules attributing stock ownership among members of a family. Section 318(a)(2) provides rules attributing stock ownership ''upward'' from partnerships, estates, trusts, and corporations to partners, beneficiaries, owners, and shareholders. In addition, section 318(a)(3) provides specific rules that attribute the ownership of stock ''downward'' from partners, beneficiaries, owners, and shareholders to partnerships, estates, trusts, and corporations. In particular, section 318(a)(3)(A) provides that stock owned, directly or indirectly, by or for a partner in a partnership or a beneficiary of an estate is considered as owned by the partnership or estate. This provision applies to all partners and beneficiaries without regard to the size of their interest in the partnership or estate. Section 318(a)(3)(B) similarly provides, subject to certain exceptions, that stock owned, directly or indirectly, by or for a beneficiary of a trust (or a person who is considered an owner of a trust) is considered owned by the trust. In comparison, section 318(a)(3)(C) provides that stock owned, directly or indirectly, by or for a shareholder in a corporation is considered owned by the corporation only if 50 percent or more in value of the stock in the corporation is owned, directly or indirectly, by such person.

Effective for the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent year of the foreign corporations, and for the taxable years of United States shareholders in which or with which such taxable years of the foreign corporations end, the Act repeals section 958(b)(4). As in effect before repeal, section 958(b)(4) provided that subparagraphs (A), (B), and (C) of section 318(a)(3) (providing for ''downward'' attribution) were not to be applied so as to consider a United States person as owning stock that is owned by a person who is not a United States person.

*C. Miscellaneous Itemized Deductions*

Under section 67(a), miscellaneous itemized deductions are allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income. As amended by the Act, section 67(g) provides that for taxable years beginning after December 31, 2017, and before January 1, 2026, no miscellaneous itemized deductions are allowable under section 67(a). In addition, under section 56(b)(1)(A)(i), an individual subject to the alternative minimum tax in 2017 is not allowed a deduction for any miscellaneous itemized deduction. Under section 63(d), itemized deductions generally mean all allowable deductions except for the deductions allowable in arriving at adjusted gross income pursuant to section 62(a), the deduction provided by section 151, and the deduction provided in section 199A (added by the Act). Miscellaneous itemized deductions include all itemized deductions other than those listed in section 67(b), which does not reference the section 965(c) deduction.

*D. Section 4940*

An inclusion under section 951(a)(1), including a section 965(a) inclusion, generally is included in the calculation of gross investment income of a private foundation for purposes of determining the excise tax imposed under section 4940 (generally 2 percent of net investment income). Gross investment income under section 4940 does not include an inclusion under section 951(a)(1), including a section 965(a) inclusion, to the extent the amount is included in computing the unrelated business income tax imposed by section 511. *See* section 4940(c)(2). Section 4940(c)(3) allows as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of income.

*E. Extensions of Time for Filing Income Tax Returns and Paying Tax for Certain Citizens and Residents Abroad*

In relevant part, regulations under section 6081 provide an extension of time to the fifteenth day of the sixth month following the close of the taxable year for filing returns of income taxes and for paying any tax shown on the return for United States citizens or residents whose tax homes and abodes, in a real and substantial sense, are outside the United States and Puerto Rico, and United States citizens and residents in military or naval service on duty, including non-permanent or short term duty, outside the United States and Puerto Rico (''specified individuals''). *See* § 1.6081–5(a)(5) and (6).

**Explanation of Provisions**

**I. Overview of Proposed Regulations**

Proposed § 1.965–1 provides general rules and definitions under section 965. Proposed § 1.965–2 provides rules relating to adjustments to E&P and basis to determine and account for the application of section 965 and a rule that limits the amount of gain recognized in connection with the application of section 961(b)(2). Proposed § 1.965–3 provides rules regarding the determination of section 965(c) deductions. Proposed § 1.965–4 sets forth rules that disregard certain transactions for purposes of section 965. Proposed §§ 1.965–5 and 1.965–6 provide rules with respect to foreign tax credits. Proposed § 1.965–7 provides rules regarding elections and payments. Proposed § 1.965–8 provides rules regarding affiliated groups, including consolidated groups. Proposed § 1.965–9 provides dates of applicability. Proposed §§ 1.962–1 and 1.962–2 provide rules relating to section 962 elections. Proposed § 1.986(c)–1 provides rules regarding the application of section 986(c) in connection with section 965.

**II. Definitions and General Rules**

Section 1.965–1 of the proposed regulations provides general rules and definitions under section 965, including general rules concerning section 965(a) inclusions, general rules concerning section 965(c) deductions, and rules concerning the treatment of certain specified foreign corporations as CFCs and certain controlled domestic partnerships as foreign partnerships.

*A. General Rules*

Proposed § 1.965–1 provides the general rules contained in section 965(a), (b), and (c). Proposed § 1.965–1(b)(1) provides that the subpart F income of a DFIC for its inclusion year is increased by the section 965(a) earnings amount. Proposed § 1.965–1(b)(2) provides that the pro rata share of the DFIC's section 965(a) earnings amount of a United States shareholder that owns, within the meaning of section 958(a), stock (the stock, ''section 958(a) stock'', and the shareholder, a ''section 958(a) U.S. shareholder'') is reduced by the DFIC's allocable share of the section 958(a) U.S. shareholder's aggregate foreign E&P deficit. If a section 958(a) U.S. shareholder is a member of a consolidated group, all section 958(a) U.S. shareholders that are members of a consolidated group are treated as a single section 958(a) U.S. shareholder for this purpose. *See* Part IX of this Explanation of Provisions section for a discussion of additional rules that apply with respect to a section 958(a) U.S. shareholder that is a member of an affiliated group of which not all members are part of a consolidated group. The amount determined after the reductions referenced in the preceding sentences is defined as the section 965(a) inclusion amount, which is the amount included by a section 958(a) U.S. shareholder of a DFIC for its taxable year in which or with which the DFIC's inclusion year ends (the ''section 958(a) U.S. shareholder inclusion year''). *See* proposed § 1.965–1(b)(1); *see also* Part II.B of the Background section of this preamble. The proposed regulations also clarify that because an increase in subpart F income by reason of section 965(a) is generally determined after the subpart F income is otherwise determined under section 952 for the taxable year, neither the section 965(a) earnings amount nor the section 965(a) inclusion amount is subject to the rules or limitations in section 952 or otherwise limited by the accumulated E&P of the DFIC. *Id.*

Proposed § 1.965–1(c) provides that a section 958(a) U.S. shareholder is generally allowed a deduction for a section 965(c) deduction amount for a section 958(a) U.S. shareholder inclusion year. The proposed regulations clarify that a section 958(a) U.S. shareholder's aggregate foreign cash position is applied against the aggregate section 965(a) inclusion amounts for a section 958(a) U.S. shareholder inclusion year. *See* proposed § 1.965–1(f)(1)–(4), (8), (42). In the case of a section 958(a) U.S. shareholder with more than one section 958(a) U.S. shareholder inclusion year, its aggregate foreign cash position is allocated to each year under proposed § 1.965–3(c)(2), and therefore the section 965(c) deduction amount is determined separately for each section 958(a) U.S. shareholder inclusion year.

Consistent with section 965(e)(2), proposed § 1.965–1(d) provides that a 10-percent corporation is treated as a CFC for purposes of sections 951 and 961, as well as for purposes of § 1.1411–10, so that those rules, applicable to CFCs, are also applicable to DFICs that are not CFCs.

Moreover, the proposed regulations provide that for purposes of identifying section 958(a) U.S. shareholders of specified foreign corporations and the section 958(a) stock of such specified foreign corporations owned by section 958(a) U.S. shareholders, a domestic partnership is treated as a foreign partnership if certain conditions are satisfied. *See* proposed § 1.965–1(e)(1). This is an expansion on the reference in section 2.13 of Notice 2018–26 to Notice 2010–41, which referred to CFCs, whereas the expanded rule includes specified foreign corporations generally.

*B. Definitions*

Section 1.965–1(f) of the proposed regulations sets forth definitions for terms that apply for all of the proposed regulations under section 965. Except as otherwise described in this Explanation of Provisions section, the definitions set forth in the proposed regulations that are also used in section 965 or one of the notices have the meaning described therein. This Part II.B of the Explanation of Provisions section also describes rules incorporated into certain defined terms that are not described elsewhere in this Explanation of Provisions section.

1. Specified Foreign Corporation

The proposed regulations provide that a specified foreign corporation means any CFC or 10-percent corporation, other than a foreign corporation that is a PFIC with respect to a shareholder and not a CFC. *See* proposed § 1.965–1(f)(45)(i) and (iii).

Section 3.01 of Notice 2018–26 noted that as a result of the application of the constructive ownership rule in section 318(a)(3)(A) (providing for ''downward'' attribution of stock from a partner to a partnership), it may be difficult to determine if a foreign corporation is a specified foreign corporation under certain circumstances. Consistent with that section of the notice, the definition of specified foreign corporation provides that, solely for purposes of determining whether a foreign corporation is a specified foreign corporation within the meaning of section 965(e)(1)(B), stock owned, directly or indirectly, by or for a partner (''tested partner'') will not be considered as being owned by a partnership under sections 958(b) and 318(a)(3)(A) if the tested partner owns less than five percent of the interests in the partnership's capital and profits. *See* proposed § 1.965–1(f)(45)(ii). For purposes of the preceding sentence, an interest in the partnership owned by another partner will be considered as being owned by the tested partner under the principles of sections 958(b) and 318, as modified pursuant to the preceding sentence, as if the interest in the partnership were stock.

2. Post-1986 Earnings and Profits

Section 3.02(b) of Notice 2018–07 indicated that the reduction of post-1986 earnings and profits of a specified foreign corporation to reflect dividends distributed during the corporation's inclusion year to another specified foreign corporation (the ''dividend reduction rule'') is intended to address the potential double-counting of the E&P of the distributing specified foreign corporation in calculating the section 965(a) inclusion amounts of a United States shareholder with respect to the distributing specified foreign corporation and the distributee specified foreign corporation. It noted, however, that to the extent that a portion of a distribution reduces the post-1986 earnings and profits of a distributing specified foreign corporation (for example, by reason of a reduction pursuant to section 312(a)(3)) in an amount in excess of the increase in the post-1986 earnings and profits of the distributee specified foreign corporation, the reduction would not relieve double-counting and thus would be inconsistent with the purpose of the rule.

Accordingly, consistent with section 3.02(b) of Notice 2018–07, the definition of ''post-1986 earnings and profits'' clarifies, in proposed § 1.965–1(f)(29)(i)(B), that the amount by which the post-1986 earnings and profits of a

specified foreign corporation is reduced under section 965(d)(3)(B) as a result of a distribution made to a specified foreign corporation in the last taxable year of the foreign corporation that begins before January 1, 2018, may not exceed the amount by which the post-1986 earnings and profits of the distributee corporation is increased as a result of the distribution. Additionally, similar to section 3.03 of Notice 2018–26, in computing post-1986 earnings and profits on November 2, 2017, in certain cases, a reduction is allowed for a portion of foreign income taxes that accrue after November 2, 2017, and on or before December 31, 2017 (''applicable taxes''). In particular, post-1986 earnings and profits on November 2, 2017, are reduced by the portion of the applicable taxes that are attributable to the portion of the taxable income (as determined under foreign law) that accrues on or before November 2, 2017, and during the specified foreign corporation's U.S. taxable year that includes November 2, 2017. *See* proposed § 1.965–1(f)(29)(ii).

Moreover, consistent with the Conference Report accompanying the Act (the ''Conference Report'') and section 3.03(b) of Notice 2018–13, proposed § 1.965–1(f)(29)(iii) provides that all deficits related to post-1986 earnings and profits, including hovering deficits, are taken into account for purposes of determining the post-1986 earnings and profits (including a deficit) of a specified foreign corporation. *See* H.R. Rep. No. 115–466, at 619 (2017) (Conf. Rep.). The fact that hovering deficits are taken into account for purposes of determining post-1986 earnings and profits, and ultimately the section 965(a) inclusion amount of a section 958(a) U.S. shareholder, does not mean that hovering deficits are taken into account for any other purpose. For example, this rule does not result in hovering deficits being taken into account for purposes of determining post-1986 undistributed earnings or pre-1987 accumulated profits in computing the taxes deemed paid for the foreign tax credit. The Treasury Department and the IRS request comments on whether additional rules are needed to address the treatment of hovering deficits that reduce post-1986 earnings and profits of a DFIC, for example when the hovering deficit creates a specified E&P deficit.

Comments noted that a specified foreign corporation that is not a CFC does not generally track E&P under U.S. tax principles and requested that taxpayers be allowed to use an alternative measurement method for determining its post-1986 earnings and profits and cash position, such as audited financial statements. This comment is not adopted in the proposed regulations. Generally, audited financial statements may serve as a starting point in the determination of a specified foreign corporation's E&P. *See* § 1.964–1. The Treasury Department and the IRS appreciate that obtaining accurate information for U.S. federal income tax purposes may present administrative challenges, particularly in the case of United States shareholders that do not have a majority interest in a specified foreign corporation. However, this challenge is not unique to this context; there are numerous longstanding provisions in the Code where minority shareholders of foreign corporations must determine E&P consistent with section 312 where no alternative measurement method is provided. For example, United States persons who own stock in PFICs must, if they make an election to treat the PFIC as a qualified electing fund under section 1293, determine the E&P of the PFIC in accordance with principles of section 312. *See* section 1293(e)(3). Additionally, minority shareholders who are nonetheless United States shareholders of CFCs must know the E&P of the CFC in order to apply the rules under subpart F. Accordingly, the Treasury Department and the IRS have determined that it would not be appropriate for the proposed regulations to provide alternative methods for determining a corporation's E&P or cash position.

3. E&P Deficit Foreign Corporation

Consistent with section 3.01 of Notice 2018–13, under the proposed regulations, for purposes of determining the status of a specified foreign corporation as a DFIC or an E&P deficit foreign corporation, it must first be determined whether the specified foreign corporation is a DFIC. Proposed § 1.965–1(f)(17)(ii) provides that, if a specified foreign corporation meets the definition of a DFIC, it is classified solely as a DFIC and not also as an E&P deficit foreign corporation, even if the specified foreign corporation otherwise satisfies the requirements of section 965(b)(3)(B) and proposed § 1.965–1(f)(22). If a specified foreign corporation does not meet the definition of a DFIC, it then must be determined whether it is an E&P deficit foreign corporation. In some cases, a specified foreign corporation may be classified as neither a DFIC nor an E&P deficit foreign corporation, despite having post-1986 earnings and profits greater than zero or a deficit in accumulated post-1986 deferred foreign income. *See* proposed § 1.965–1(g), *Example 5.*

Comments requested that previously taxed E&P should be disregarded in determining a specified E&P deficit of an E&P deficit foreign corporation. Section 965(b)(3)(B) provides that a specified foreign corporation is an E&P deficit foreign corporation if it has a deficit in post-1986 earnings and profits as of November 2, 2017. For purposes of section 965, the term post-1986 earnings and profits is defined in section 965(d)(3) and is computed in accordance with sections 964(a) and 986. Under section 964(a), earnings and profits are determined according to rules substantially similar to those applicable to domestic corporations.

Previously taxed E&P are a type of E&P. *See* section 959(c). No express exclusion of previously taxed E&P is provided in section 965(d)(3) for purposes of determining post-1986 earnings and profits. In contrast, the term accumulated post-1986 deferred foreign income, as defined in section 965(d)(2), explicitly excludes previously taxed E&P. *See* section 965(d)(2)(B) (citing section 959). Accordingly, the proposed regulations provide that previously taxed E&P is not excluded in determining the existence and amount of a specified E&P deficit, which is defined in reference to post-1986 earnings and profits and not in reference to accumulated post-1986 deferred foreign income. The Treasury Department and the IRS are considering other rules with respect to the definitions of post-1986 earnings and profits, accumulated post-1986 deferred foreign income, and specified E&P deficit in connection with the finalization of these proposed regulations. *See* section 965(o). The Treasury Department and the IRS welcome comments on this subject.

4. Accumulated Post-1986 Deferred Foreign Income

Consistent with section 3.02(c) of Notice 2018–07, proposed § 1.965–1(f)(7)(i)(C) provides that in the case of a CFC that has shareholders that are not United States shareholders on an E&P measurement date, the accumulated post-1986 deferred foreign income of the CFC on such E&P measurement date is reduced by amounts that would be described in section 965(d)(2)(B) if those shareholders were United States shareholders. In such cases, the principles of Revenue Ruling 82–16, 1982–1 C.B. 106, apply in order to determine the amounts by which accumulated post-1986 deferred foreign income is reduced.

Proposed § 1.965–1(f)(7)(ii) clarifies that, for purposes of determining the accumulated post-1986 deferred foreign income of a specified foreign corporation as of an E&P measurement date, the E&P of the specified foreign corporation that are described in section 959(c)(2) (or that would be described in section 959(c)(2) applying the principles of Revenue Ruling 82–16, 1982–1 C.B. 106) by reason of subpart F income are treated as described in section 965(d)(2)(B) and proposed § 1.965–1(f)(7)(i)(B) or (f)(7)(i)(C) only to the extent that such income is accrued by the specified foreign corporation as of such E&P measurement date. For rules regarding the interaction of sections 951, 956, 959, and 965 generally, see Part IV.A of this Explanation of Provisions section.

5. Cash Measurement Dates

Consistent with section 3.02 of Notice 2018–26, the definitions of the cash measurement dates, and of pro rata share, provide the following:

(i) The final cash measurement date of a specified foreign corporation is the close of the last taxable year of the specified foreign corporation that begins before January 1, 2018, and ends on or after November 2, 2017, if any;

(ii) The second cash measurement date of a specified foreign corporation is the close of the last taxable year of the specified foreign corporation that ends after November 1, 2016, and before November 2, 2017, if any;

(iii) The first cash measurement date of a specified foreign corporation is the close of the last taxable year of the specified foreign corporation that ends after November 1, 2015, and before November 2, 2016, if any; and

(iv) A United States shareholder takes into account its pro rata share of the cash position of a specified foreign corporation as of any cash measurement date of the specified foreign corporation on which the United States shareholder is a United States shareholder of the specified foreign corporation, regardless of whether the United States shareholder is a United States shareholder of the specified foreign corporation as of any other cash measurement date, including the final cash measurement date of the specified foreign corporation.

*See* proposed § 1.965–1(f)(24), (31), (25), and (30)(iii), respectively. Section 3.02 of Notice 2018–26 also announced that for purposes of applying the rules contained therein, a 52–53-week taxable year is deemed to begin on the first day of the calendar month nearest to the first day of the 52–53-week taxable year and is deemed to end or close on the last day of the calendar month nearest to the last day of the 52–53-week taxable year, as the case may be. *See* § 1.441–2(c). The Treasury Department and the IRS have determined that the rules contained in § 1.441–2(c), which relate to the application of effective dates, are not relevant in determining when a 52–53-week taxable year is considered to begin or end for purposes of the cash measurement dates; instead, the actual dates on which such a year begins and ends should be taken into account in determining cash measurement dates. Therefore, the proposed regulations do not contain the rule in section 3.02 of Notice 2018–26 referring to § 1.441–2(c).

Comments requested guidance on the measurement of cash when a section 381 transaction occurs during the last year of a specified foreign corporation that begins before January 1, 2018. The Treasury Department and the IRS have defined cash measurement date in the notices and largely adopted the definition in the proposed regulations. The Treasury Department and the IRS have determined that these rules provide appropriate guidance, and therefore additional rules are not necessary. See also Part V.A.2 of this Explanation of Provisions section, for a discussion of the rules for disregarding certain assets to prevent double-counting under section 965(c)(3)(D), and Part VI.A of this Explanation of Provisions section, for a discussion of the anti-avoidance rule in proposed § 1.965–4(b), which could apply, for example, to liquidations that reduce a section 958(a) U.S. shareholder's aggregate foreign cash position.

6. Cash Position & Derivative Financial Instruments

Consistent with section 3.01(c) of Notice 2018–07, the proposed regulations address the treatment of derivative financial instruments for purposes of measuring the cash position of a specified foreign corporation. Generally, the cash position of any specified foreign corporation includes, among other things, the fair market value of the cash-equivalent assets held by the corporation. *See* proposed § 1.965–1(f)(16)(i)(C). Consistent with section 3.01(c) of Notice 2018–07, the proposed regulations define the term cash-equivalent asset to include derivative financial instruments held by the specified foreign corporation that is not a bona fide hedging transaction. *See* proposed § 1.965–1(f)(13)(v). Derivative financial instruments include notional principal contracts, options contracts, forward contracts, futures contracts, short positions in securities and commodities, and any similar financial instruments. *See* proposed § 1.965–1(f)(18).

The proposed regulations provide that the value of each derivative financial instrument that must be taken into account in determining the cash position of a specified foreign corporation may be positive or negative, but that the aggregate amount taken into account for all derivative financial instruments (excluding bona fide hedging transactions) of a specified foreign corporation cannot be less than zero. *See* proposed § 1.965–1(f)(16)(iii).

Consistent with section 3.01(c) of Notice 2018–07, the proposed regulations also provide that if a derivative financial transaction is a bona fide hedging transaction that is used to hedge a cash-equivalent asset, the value of the cash-equivalent asset identified on the taxpayer's books and records as the asset being hedged must be adjusted by the fair market value of the bona fide hedging transaction that is used to hedge such cash-equivalent asset (such hedging transaction, a ''cash-equivalent asset hedging transaction''). *See* proposed § 1.965–1(f)(16)(ii). The value of a cash-equivalent asset hedging transaction must be taken into account in determining the cash position of a specified foreign corporation whether the cash-equivalent asset hedging transaction has positive or negative value, but only to the extent that the cash-equivalent asset hedging transaction (or transactions) does not reduce the fair market value of the asset being hedged below zero. *Id.* A bona fide hedging transaction with respect to an asset that is not a cash-equivalent asset or with respect to a liability (as described in § 1.1221–2(b)(2)) is not included in a specified foreign corporation's cash position for purposes of section 965(c)(3)(B).

The proposed regulations define a bona fide hedging transaction as a hedging transaction that meets the requirements of a bona fide hedging transaction described in § 1.954–2(a)(4)(ii) and that is properly identified as such in accordance with the requirements of that subparagraph. Proposed § 1.965–1(f)(12). Consistent with the definition of a bona fide hedging transaction in § 1.954–2(a)(4)(ii), in the case of an asset hedging transaction, the risk being hedged may be with respect to ordinary property, section 1231 property, or a section 988 transaction. Because the identification requirements of § 1.954–2(a)(4)(ii) are generally relevant only to CFCs, whereas section 965 applies to all specified foreign corporations, the proposed regulations provide that the

identification requirements apply only with respect to CFCs. *Id.*

7. Accounts Receivable and Accounts Payable

Consistent with section 3.04(a) of Notice 2018–13 as well as the clarification provided in section 3.06 of Notice 2018–26, the definitions of ''accounts payable'' and ''accounts receivable'' in proposed § 1.965–1(f)(5) and (6) provide that for purposes of determining net accounts receivable taken into account in determining the cash position of a specified foreign corporation, the term ''accounts receivable'' means receivables described in section 1221(a)(4), and the term ''accounts payable'' means payables arising from the purchase of property described in section 1221(a)(1) or 1221(a)(8) or the receipt of services from vendors or suppliers, and only receivables or payables with a term upon issuance that is less than one year are taken into account. In addition, receivables that are treated as accounts receivable within the meaning of section 965(c)(3)(C)(i) and proposed § 1.965–1(f)(6) are not also treated as short-term obligations. *See* proposed § 1.965–1(f)(43).

Comments requested modifications to the definition of accounts payable for purposes of determining a specified foreign corporation's cash position, including that accounts payable be defined to include payables related to the licensing of intellectual property, payables to employees in the ordinary course of business, and payables arising from property described in section 1221(a)(2). The term ''accounts payable'' is not defined in the statute, and the Treasury Department and the IRS have determined that the definition in the proposed regulations is consistent with the ordinary meaning of accounts payable. Therefore no change is made in the proposed regulations to the definition of accounts payable.

8. Short-Term Obligations

Consistent with section 3.04(b) of Notice 2018–13, proposed § 1.965–1(f)(43) provides that, for purposes of determining a specified foreign corporation's cash position, a loan that must be repaid on the demand of the lender (or that must be repaid within one year of such demand) is treated as a short-term obligation, regardless of the stated term of the instrument, and thus is included in the specified foreign corporation's cash position. In response to a comment, proposed § 1.965–1(f)(43) clarifies that an instrument's term upon issuance is used for purposes of determining whether an obligation is a short-term obligation.

A comment requested that taxpayers be able to prove, based on facts and circumstances, that a demand loan should not be treated as a short-term obligation. The Treasury Department and the IRS have determined that any facts-and-circumstances test would not be administrable, particularly to the extent that the test required a determination of a taxpayer's subjective intent with respect to the payment of the loan. Accordingly, this comment is not adopted.

9. Pro Rata Share

Consistent with section 3.03(a) of Notice 2018–13, the proposed regulations provide that, for purposes of determining a United States shareholder's pro rata share of the specified E&P deficit of an E&P deficit foreign corporation that has multiple classes of stock outstanding, the specified E&P deficit is allocated among the shareholders of the corporation's common stock and in proportion to the value of the common stock held by such shareholders. *See* proposed § 1.965–1(f)(30)(ii). Comments are requested regarding whether there are circumstances in which a specified E&P deficit should be allocated to shareholders of an E&P deficit foreign corporation's preferred stock and, if so, how to allocate as between shareholders of common stock and shareholders of preferred stock as well as among shareholders of preferred stock. The proposed regulations also clarify that, for purposes of determining a shareholder's pro rata share of a specified E&P deficit, the value of the common stock is determined as of the last day of the last taxable year of the E&P deficit foreign corporation that begins before January 1, 2018. *Id.*

See Part II.B.5 of this Explanation of Provisions section for a discussion of the definition of pro rata share with respect to the cash position of a specified foreign corporation.

10. Domestic Pass-Through Entities

As explained in section 3.05(b) of Notice 2018–26, section 965 increases the amount included in the gross income of a United States shareholder under section 951(a)(1) only if the United States shareholder owns section 958(a) stock of one or more specified foreign corporations. *See* section 951(a)(2)(A). Accordingly, if a domestic pass-through entity is a United States shareholder of a DFIC and owns section 958(a) stock of the DFIC, the section 965(a) inclusion amount with respect to the section 958(a) stock and the section 965(c) deduction amount with respect to the section 965(a) inclusion amount are each determined at the level of the domestic pass-through entity. *See* section 951(a)(1). However, the domestic pass-through owners of the domestic pass-through entity are subject to federal income tax on their share of the aggregate section 965(a) inclusion amount with respect to section 958(a) stock owned by the domestic pass-through entity. Accordingly, in the case of a domestic pass-through entity that is a section 958(a) U.S. shareholder with respect to one or more DFICs, each domestic pass-through owner takes into account its share of the aggregate section 965(a) inclusion amount with respect to section 958(a) stock of one or more DFICs of the domestic pass-through entity and its share of the section 965(c) deduction amount with respect to such amount (each, a ''domestic pass-through owner share''), regardless of whether such domestic pass-through owner is also a United States shareholder with respect to such DFIC, giving rise to a ''section 965(a) inclusion'' and a ''section 965(c) deduction'' to the domestic pass-through owner. *See* proposed § 1.965–1(f)(21), (37) and (41). For this purpose, a pass-through owner's share is determined under the provisions of subchapter K of the Code.

Proposed § 1.965–3(g) provides that an aggregate section 965(a) inclusion amount for a section 958(a) U.S. shareholder inclusion year and the related section 965(c) deduction amount must be allocated in the same proportion. For example, if a domestic pass-through owner is allocated 50 percent of an aggregate section 965(a) inclusion amount with respect to section 958(a) stock of a domestic pass-through entity, the domestic pass-through owner must be allocated 50 percent of the related section 965(c) deduction amount. If the domestic pass-through owner is also a section 958(a) U.S. shareholder with respect to the DFIC because it owns section 958(a) stock of the DFIC, the section 965(a) inclusion amount with respect to the section 958(a) stock of the domestic pass-through owner and the section 965(c) deduction amount with respect to such amount are determined separately from the domestic pass-through owner's share of the aggregate section 965(a) inclusion amount and section 965(c) deduction amount of the domestic pass-through entity.

Consistent with section 3.05(b) of Notice 2018–26, proposed § 1.965–1(f)(19) defines the term ''domestic pass-through entity'' to mean a pass-through entity that is a United States person (as defined in section 7701(a)(30)), and

proposed § 1.965–1(f)(28) defines the term ''pass-through entity'' to mean a partnership, S corporation, or any other person to the extent that the income or deductions of such person are included in the income of one or more direct or indirect owners or beneficiaries of the person. Accordingly, if, for example, a domestic trust owns section 958(a) stock of a single DFIC and is subject to federal income tax on a portion of its section 965(a) inclusion amount and its domestic pass-through owners are subject to tax on the remaining portion, the domestic trust is treated as a domestic pass-through entity with respect to such remaining portion. As defined, a pass-through entity does not include a REIT or a regulated investment company (''RIC''). The term ''domestic pass-through owner'' means a United States person that is a partner, shareholder, beneficiary, grantor, or owner, as the case may be, in a domestic pass-through entity, except that, in the case of tiered pass-through entities, the term does not include a partner, shareholder, beneficiary, grantor, or owner that is itself a domestic pass-through entity. *See* proposed § 1.965–1(f)(20). In the case of tiered pass-through entities, a reference to a domestic pass-through owner includes a United States person that is an indirect partner, shareholder, beneficiary, grantor, or owner through one or more other pass-through entities, and a reference to a domestic pass-through owner share of the aggregate section 965(a) inclusion amount and section 965(c) deduction amount of a domestic pass-through entity includes such domestic pass-through owner's share of the aggregate section 965(a) inclusion amount and section 965(c) deduction amount of a domestic pass-through entity owned indirectly by the domestic pass-through owner through one or more other pass-through entities. *See* proposed § 1.965–1(f)(20) and (21).

*C. Foreign Currency Translation*

Consistent with section 3.05(a) of Notice 2018–13, the proposed regulations provide that, for purposes of determining the section 965(a) earnings amount of a specified foreign corporation, the accumulated post-1986 deferred foreign income of the specified foreign corporation as of each of the E&P measurement dates must be compared in the functional currency of the specified foreign corporation. *See* proposed § 1.965–1(f)(36). If the functional currency of a specified foreign corporation changes between the two E&P measurement dates, the comparison must be made in the functional currency of the specified foreign corporation as of December 31, 2017, by translating the specified foreign corporation's E&P as of November 2, 2017, into the new functional currency using the spot rate on November 2, 2017. *Id.; see also* proposed § 1.965–4(c)(1) (disregarding any such change in functional currency for purposes of applying section 965 to a United States shareholder of the specified foreign corporation under certain circumstances).

Furthermore, the proposed regulations are consistent with section 3.05(b) of Notice 2018–13, which indicates that the spot rate on December 31, 2017, is to be used for translating the section 965(a) earnings amount of a DFIC into U.S. dollars for purposes of determining the section 965(a) inclusion amount of a United States shareholder with respect to the DFIC, as well as for purposes of translating other amounts necessary for the application of section 965(b), including (i) translating a section 965(a) earnings amount into U.S. dollars in computing amounts described in section 965(b)(2)(A) and (B), (ii) translating a specified E&P deficit into U.S. dollars in order to determine a United States shareholder's aggregate foreign E&P deficit under section 965(b)(3)(A), (iii) translating a section 965(a) inclusion amount with respect to a DFIC (if the amount was reduced by an aggregate foreign E&P deficit under section 965(b)(1)) back into the functional currency of the DFIC for purposes of determining the E&P of the DFIC described in section 959(c)(2), and (iv) translating the portion of the U.S. dollar-denominated aggregate foreign E&P deficit allocated to a DFIC under section 965(b)(2) into the functional currency of the DFIC for purposes of determining its E&P described in section 959(c)(2) by reason of section 965(b)(4)(A). *See* proposed §§ 1.965–1(b)(1), (f)(9) and (11), and 1.965–2(c) and (d). Proposed § 1.965–6(b) also provides that in applying section 902, the section 965(a) inclusion amount must be translated (if necessary) back into the DFIC's functional currency using the spot rate on December 31, 2017.

Section 3.05(c) of Notice 2018–13 describes regulations to ensure that the cash position of a specified foreign corporation with respect to any cash measurement date is expressed in U.S. dollars, so that the amount of a United States shareholder's aggregate foreign cash position is the greater of the aggregate amounts on each cash measurement date. In determining the cash position attributable to net accounts receivable, the amount of accounts receivable and accounts payable (in each case, if not otherwise denominated in U.S. dollars) must be translated into U.S. dollars at the spot rate on the relevant cash measurement date. The fair market value of assets described in section 965(c)(3)(B)(iii) must also be determined in U.S. dollars on the relevant cash measurement date. For example, in the case of foreign currency, the fair market value equals the currency amount translated at the spot rate on the relevant cash measurement date. Consistent with section 3.05(c) of Notice 2018–13, the proposed regulations provide that amounts taken into account in determining the cash position are translated (if necessary) using the spot rate on the relevant cash measurement date. *See* proposed § 1.965–1(f)(16)(iv).

**III. Section 962 Elections**

The proposed regulations provide rules consistent with section 5 of Notice 2018–26 related to elections under section 962. Proposed § 1.962–2(a) clarifies that an individual domestic pass-through owner that is a United States shareholder with respect to a DFIC may make an election under section 962 with respect to the individual's share of the section 965(a) inclusion amount of a domestic pass-through entity with respect to the DFIC, and an individual who is not a United States shareholder of a DFIC is not permitted to make an election under section 962 with respect to the individual's share of a section 965(a) inclusion amount of a domestic pass-through entity with respect to the DFIC. *See also* proposed § 1.962–1(b)(1)(i)(A)(*1*)(*ii*).

In addition, notwithstanding the rule in current § 1.962–1(b)(1)(i) providing that a deduction of a United States shareholder does not reduce the amount included in gross income under section 951(a) for purposes of computing the amount of tax that would be imposed under section 11, the Treasury Department and the IRS have determined that in the case of a taxpayer making an election under section 962, the section 965(c) deduction (which is generally available to United States shareholders of DFICs, including individuals) should be allowed with respect to the tax imposed under section 11 rather than under section 1. *See* H.R. Rep. No. 115–466, at 620 (2017) (Conf. Rep.). Thus, under proposed § 1.962–1(b)(1)(i)(B), ''taxable income'' as used in section 11 is reduced by a taxpayer's section 965(c) deduction with respect to a section 965(a) inclusion to which the section 962 election applies. However, the proposed regulations clarify that, subject to future guidance, ''taxable

income'' as used in section 11 is not reduced by any other amounts, including any other deductions.

To clarify that a section 965(c) deduction taken into account in determining ''taxable income'' as used in section 11 cannot then be deducted again at the individual level, the proposed regulations provide that any section 965(c) deduction allowed in determining ''taxable income'' as used in section 11 for purposes of computing the tax due as a result of a section 962 election is not also allowed for purposes of determining an individual's actual taxable income. *See* proposed § 1.965–3(e)(1).

**IV. Adjustments to E&P and Basis**

Proposed § 1.965–2 contains rules related to adjustments to E&P and basis to determine and account for the application of section 965(a) and (b) and proposed § 1.965–1(b) and a rule that limits the amount of gain recognized in connection with the application of section 961(b)(2).

*A. Determination of and Adjustments to E&P in the Last Taxable Year of a Specified Foreign Corporation That Begins Before January 1, 2018, for Purposes of Applying Sections 959 and 965*

Consistent with section 3.02(d) of Notice 2018–07, the proposed regulations clarify the interaction between the rules under sections 959 and 965 in the last taxable year of a specified foreign corporation that begins before January 1, 2018, and the taxable year of a section 958(a) U.S. shareholder of the specified foreign corporation in which or with which such year ends. Proposed § 1.965–2(b) provides the following rules relating to adjustments to E&P for determining a section 958(a) U.S. shareholder's inclusion under section 951(a)(1), including by reason of section 965(a) and proposed § 1.965–1(b), and the treatment of distributions under section 959: First, the subpart F income of the specified foreign corporation is determined without regard to section 965(a), and a section 958(a) U.S. shareholder's inclusion under section 951(a)(1)(A) by reason of such amount is taken into account.

Second, the treatment of a distribution from the specified foreign corporation to another specified foreign corporation that is made before January 1, 2018, is determined under section 959.

Third, each of the post-1986 earnings and profits (including a deficit) of the specified foreign corporation, the accumulated post-1986 deferred foreign income of the specified foreign corporation, the section 965(a) earnings amount of the specified foreign corporation, and the section 965(a) inclusion amount of the section 958(a) U.S. shareholder with respect to the specified foreign corporation, if any, is determined, and the E&P (including a deficit) of the specified foreign corporation are adjusted as provided in proposed § 1.965–2(c) and (d) (as discussed in Part IV.B of this Explanation of Provisions section). For a rule disregarding subpart F income earned after an E&P measurement date for purposes of calculating accumulated post-1986 deferred foreign income as of the E&P measurement date, see Part II.B.4 of this Explanation of Provisions section and proposed § 1.965–2(j), *Example 2* and *Example 3.*

Fourth, the treatment of all distributions from the specified foreign corporation other than those described in step 2 is determined under section 959.

Fifth, an amount is determined under section 956 with respect to the specified foreign corporation and the section 958(a) U.S. shareholder, and the shareholder's inclusion under section 951(a)(1)(B) is taken into account.

*B. Adjustments to E&P by Reason of Section 965(a) and (b)*

1. Adjustments to E&P by Reason of Section 965(a)

Proposed § 1.965–2(c) provides that if a section 958(a) U.S. shareholder has a section 965(a) inclusion with respect to a DFIC, the DFIC will have previously taxed E&P with respect to the section 958(a) U.S. shareholder in an amount equal to the section 965(a) inclusion amount (referred to as ''section 965(a) previously taxed earnings and profits''). Because section 965(a) previously taxed earnings and profits must be tracked in functional currency whereas the section 965(a) inclusion amount is in U.S. dollars, as noted in Part II.C of this Explanation of Provisions section, the proposed regulations provide that the section 965(a) inclusion amount must be translated (if necessary) into the functional currency of the DFIC using the spot rate on December 31, 2017, in determining the amount of the section 965(a) previously taxed earnings and profits.

Under proposed § 1.965–2(c), the E&P of a DFIC described in section 959(c)(3) are reduced by an amount equal to the section 965(a) previously taxed earnings and profits of the corporation. In certain cases, the section 965(a) inclusion amount with respect to the DFIC, and therefore the section 965(a) previously taxed earnings and profits of the DFIC with respect to a section 958(a) U.S. shareholder, may exceed the E&P described in section 959(c)(3) of the DFIC. For example, this will be the case when a DFIC incurs a loss after the E&P measurement date on which it determines its section 965(a) earnings amount and before the end of its inclusion year. In such a case, under the proposed regulations, a deficit in E&P described in section 959(c)(3) will be created or increased.

2. Adjustments to E&P by Reason of Section 965(b)

Proposed § 1.965–2(d) provides rules relating to E&P of DFICs and E&P deficit foreign corporations by reason of a reduction under section 965(b)(1) and proposed § 1.965–1(b)(2) (reduction by the DFIC's allocable share of a section 958(a) U.S. shareholder's aggregate foreign E&P deficit) or section 965(b)(5) and proposed § 1.965–8(b) (reduction by the DFIC's allocable share of a section 958(a) U.S. shareholder's applicable share of an affiliated group's aggregate unused E&P deficit) (collectively, the ''reduction rules'').

i. Adjustments to E&P of DFICs

Under proposed § 1.965–2(d)(1), if a section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of a DFIC is reduced under the reduction rules, the DFIC will have previously taxed E&P (referred to as ''section 965(b) previously taxed earnings and profits'') with respect to the section 958(a) U.S. shareholder in an amount equal to the amount of the reduction, if any, translated (if necessary) into the functional currency of the DFIC using the spot rate on December 31, 2017. For purposes of applying section 959, section 965(b) previously taxed earnings and profits are treated as E&P that are included in the gross income of the section 958(a) U.S. shareholder under section 951(a)(1)(A). Furthermore, the E&P (including a deficit) described in section 959(c)(3) of the DFIC are reduced (or, in the case of a deficit, increased) by an amount equal to the section 965(b) previously taxed earnings and profits.

ii. Adjustments to E&P of E&P Deficit Foreign Corporations

Under proposed § 1.965–2(d)(2)(i)(A), the E&P described in section 959(c)(3) of an E&P deficit foreign corporation are increased by an amount equal to the portion of a section 958(a) U.S. shareholder's pro rata share of the specified E&P deficit of the E&P deficit foreign corporation taken into account under the reduction rules, translated (if necessary) into the functional currency

of the E&P deficit foreign corporation using the spot rate on December 31, 2017. The proposed regulations clarify that the E&P increased by reason of this provision are not treated as E&P of the taxable year described in section 316(a)(2). See also proposed § 1.965–6(c)(3) for a rule on the timing of this adjustment for purposes of determining a deemed paid credit allowed under sections 902 and 960 with respect to the E&P deficit foreign corporation (which is discussed in Part VII.C.1 of this Explanation of Provisions section).

In addition, proposed § 1.965–2(d)(2)(i)(B) provides that, for purposes of section 952, a section 958(a) U.S. shareholder's pro rata share of the E&P of an E&P deficit foreign corporation is increased by an amount equal to the portion of the section 958(a) U.S. shareholder's pro rata share of the specified E&P deficit of the E&P deficit foreign corporation taken into account under the reduction rules, translated (if necessary) into the functional currency of the E&P deficit foreign corporation using the spot rate on December 31, 2017, and such increase is attributable to the same activity to which the deficit so taken into account was attributable.

Proposed § 1.965–2(d)(2)(ii) provides rules for determining the portion of a section 958(a) U.S. shareholder's pro rata share of a specified E&P deficit of an E&P deficit foreign corporation taken into account under the reduction rules. Proposed § 1.965–2(d)(2)(ii)(A) details the circumstances in which all of a pro rata share of a specified E&P deficit will be taken into account. Proposed § 1.965–2(d)(2)(ii)(B) provides that if the rule in the preceding sentence does not apply, a section 958(a) U.S. shareholder must designate the portion taken into account.

*C. Adjustments to Basis by Reason of Section 965(a) and (b)*

1. Adjustments to Basis by Reason of Section 965(a)

Proposed § 1.965–2(e) provides that, under section 961(a), a section 958(a) U.S. shareholder's basis in section 958(a) stock of a DFIC, or property by reason of which the section 958(a) U.S. shareholder is considered under section 958(a)(2) as owning section 958(a) stock of a DFIC (''applicable property''), is increased by the section 958(a) U.S. shareholder's section 965(a) inclusion amount with respect to the DFIC. However, rules relating to basis adjustments in the case of a section 962 election are reserved. Comments are requested as to the appropriate amount of a basis adjustment with respect to a DFIC with respect to which a section 962 election is effective.

2. Adjustments to Basis by Reason of Section 965(b)

Proposed § 1.965–2(f)(1) clarifies that, in general, no adjustments to basis of stock or property are made under section 961 (or any other provision of the Code) to take into account the reduction to a section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of a DFIC under the reduction rules. However, section 965(o) provides authority to write regulations concerning basis adjustments in contemplation of the fact that ''basis adjustments (increases or decreases) may be necessary with respect to both the stock of the DFIC and the E&P deficit foreign corporation.'' H.R. Rep. No. 115–466, at 620 (2017) (Conf. Rep.). The Conference Report stated:

> For example, with respect to the stock of the deferred foreign income corporation, the Secretary may determine that a basis increase is appropriate in the taxable year of the section 951A [sic] inclusion or, alternatively, the Secretary may modify the application of section 961(b)(1) with respect to such stock. Moreover, with respect to the stock of the E&P deficit [foreign] corporation, the Secretary may require a reduction in basis for the taxable year in which the U.S. shareholder's pro rata share of the earnings of the E&P deficit [foreign] corporation are increased.

*Id.* at 620–21.

The Treasury Department and the IRS have determined that an increase to the basis of stock of DFICs is appropriate only if there is a corollary reduction to the basis of the stock of E&P deficit foreign corporations. However, the Treasury Department and the IRS recognize that such reduction, which could in certain cases give rise to gain, could be overly burdensome for taxpayers. Accordingly, proposed § 1.965–2(f)(2) allows taxpayers to elect to make the relevant basis adjustments, in which case such adjustments must be consistently made with respect to all section 958(a) stock of specified foreign corporations owned by a section 958(a) U.S. shareholder and related persons. The relevant basis adjustments are (i) an increase in the section 958(a) U.S. shareholder's basis in the section 958(a) stock of a DFIC or applicable property with respect to a DFIC by an amount equal to the section 965(b) previously taxed earnings and profits of the DFIC with respect to the section 958(a) U.S. shareholder, and (ii) a reduction in the section 958(a) U.S. shareholder's basis in the section 958(a) stock of an E&P deficit foreign corporation or applicable property with respect to an E&P deficit foreign corporation by an amount equal to the portion of the section 958(a) U.S. shareholder's pro rata share of the specified E&P deficit of the E&P deficit foreign corporation taken into account under the reduction rules. However, as noted in Part IV.C.1 of this Explanation of Provisions section, rules relating to basis adjustments in the case of a section 962 election are reserved. An election under § 1.965–2(f)(2) is generally made by attaching a statement, signed under penalties of perjury, to the section 958(a) U.S. shareholder's return for the first taxable year that includes the last day of the last taxable year of a DFIC or E&P deficit foreign corporation of the shareholder that begins before January 1, 2018, including the shareholder's name and taxpayer identification number and a statement that the shareholder and all related persons make the election. *See* proposed § 1.965–2(f)(2)(iii)(B).

*D. Gain-Reduction Rule*

Consistent with section 3.03 of Notice 2018–07, and with the modification described in section 4 of Notice 2018–13, proposed § 1.965–2(g)(1) provides a gain-reduction rule pursuant to which, if a section 958(a) U.S. shareholder receives distributions through a chain of ownership described under section 958(a) from a DFIC during the inclusion year that are attributable to section 965(a) previously taxed earnings and profits, the amount of gain that would otherwise be recognized under section 961(b)(2) by the section 958(a) U.S. shareholder with respect to the section 958(a) stock of the DFIC, or applicable property with respect to the DFIC, is reduced (but not below zero) by an amount equal to the section 965(a) previously taxed earnings and profits of the DFIC with respect to the section 958(a) U.S. shareholder.

If a taxpayer makes the election described in proposed § 1.965–2(f)(2), the gain-reduction rule will also apply to distributions attributable to section 965(b) previously taxed earnings and profits, and the amount of gain that would otherwise be recognized by the section 958(a) U.S. shareholder is also reduced by the amount of the section 965(b) previously taxed earnings and profits of the DFIC with respect to the section 958(a) U.S. shareholder.

In order to ensure that the amount of gain in the section 958(a) stock or applicable property that would have been recognized under section 961(b)(2) remains reflected in the section 958(a) stock or applicable property, proposed § 1.965–2(g)(2) provides that the basis in the section 958(a) stock or applicable

property must be reduced by the amount that would have been recognized as gain.

*E. Rules of Application for Basis Adjustments*

The proposed regulations provide certain rules of application common to all basis adjustments described in proposed § 1.965–2(e), (f)(2), and (g)(2) (''specified basis adjustments''). *See* proposed § 1.965–2(h). The rules address the timing and allocation among shares of the specified basis adjustments. *See* proposed § 1.965–2(h)(1) and (4). They also require netting of the specified basis adjustments and gain recognition to the extent that a net downward adjustment would exceed basis. *See* proposed § 1.965–2(h)(2) and (3). In addition, they make clear that the specified basis adjustments are limited to adjustments to property held by a section 958(a) U.S. shareholder, except in circumstances involving foreign pass-through entities. *See* proposed § 1.965–2(h)(5).

**V. Section 965(c) Deductions**

Proposed § 1.965–3 provides rules regarding section 965(c) deductions and section 965(c) deduction amounts.

*A. Determination of Aggregate Foreign Cash Position*

1. Disregard of Certain Obligations Between Related Specified Foreign Corporations

Consistent with section 3.01(b) and (c) of Notice 2018–07, the proposed regulations provide that, for purposes of determining the aggregate foreign cash position of a section 958(a) U.S. shareholder, accounts receivable, accounts payable, short-term obligations, and derivative financial instruments between related specified foreign corporations are disregarded, if applicable, on the corresponding cash measurement dates of the specified foreign corporations to the extent of the smallest of the section 958(a) U.S. shareholder's ownership percentages of section 958(a) stock of the specified foreign corporations owned by the section 958(a) U.S. shareholder on the corresponding cash measurement dates. *See* proposed § 1.965–3(b)(1).

2. Disregard of Certain Assets To Prevent Double Counting

Section 3.05(a) of Notice 2018–26 announced the intent to issue forms, publications, regulations, or other guidance specifying the documentation that a United States shareholder must maintain or provide, and the time and manner for providing any such documentation, in order to make the required demonstration to the Secretary to rely on section 965(c)(3)(D) in excluding net accounts receivable, actively traded property, and short-term obligations in determining its aggregate foreign cash position. To disregard assets under this rule, the proposed regulations provide that a section 958(a) U.S. shareholder must attach a statement to its timely filed return (taking into account extensions, if any) containing a description of the asset that would be taken into account with respect to both specified foreign corporations; a statement of the amount by which its pro rata share of the cash position of one specified foreign corporation is reduced; a detailed explanation of why there would otherwise be double-counting, including the computation of the amount taken into account with respect to the other specified foreign corporation; and an explanation of why the rule described in Part V.A.1 of this Explanation of Provisions section does not apply to disregard such amounts. *See* proposed § 1.965–3(b)(2).

*B. Determination of Aggregate Foreign Cash Position for Section 958(a) U.S. Shareholder Inclusion Year*

Consistent with section 3.05(a) of Notice 2018–07, the proposed regulations provide that in the case of a section 958(a) U.S. shareholder that has a section 965(a) inclusion amount in more than one taxable year, the amount of the aggregate foreign cash position taken into account in the first taxable year will equal the lesser of the section 958(a) U.S. shareholder's aggregate foreign cash position or the aggregate 965(a) inclusion amount taken into account by the section 958(a) U.S. shareholder in that taxable year. Furthermore, the amount of the section 958(a) U.S. shareholder's aggregate foreign cash position taken into account in any succeeding taxable year will be the lesser of the excess, if any, of its aggregate foreign cash position over the amount of its aggregate foreign cash position taken into account in preceding taxable years, or the aggregate section 965(a) inclusion amount taken into account by the section 958(a) U.S. shareholder in such succeeding taxable year. *See* proposed § 1.965–3(c)(2).

In addition, also consistent with section 3.05(a) of Notice 2018–07, the proposed regulations provide that, for purposes of determining the aggregate foreign cash position of a section 958(a) U.S. shareholder for a taxable year in which it takes into account a section 965(a) inclusion amount, a section 958(a) U.S. shareholder can assume that its pro rata share of the cash position of any specified foreign corporation whose last taxable year beginning before January 1, 2018, ends after the date the return for such taxable year of the section 958(a) U.S. shareholder is timely filed (taking into account extensions, if any) will be zero as of the cash measurement date with which the year of the specified foreign corporation ends. If a section 958(a) U.S. shareholder's pro rata share of the cash position of a specified foreign corporation was treated as zero pursuant to the preceding sentence for a section 958(a) U.S. shareholder inclusion year (an ''estimated section 958(a) U.S. shareholder inclusion year''), the final cash measurement date amount in fact exceeds the average of the first and second cash measurement date amounts with respect to the section 958(a) shareholder, and the shareholder's aggregate section 965(a) inclusion amount in fact exceeds the final cash measurement date amount, interest and penalties will not be imposed if the section 958(a) U.S. shareholder makes appropriate adjustments by amending the return for the estimated section 958(a) U.S. shareholder inclusion year to reflect the correct aggregate foreign cash position by the due date (taking into account extensions, if any) for the return for the year after the estimated section 958(a) U.S. shareholder inclusion year. *See* proposed § 1.965–3(c)(3).

*C. Recapture of Section 965(c) Deductions for Expatriated Entities*

Proposed § 1.965–3(d) harmonizes the rule provided in section 965(l) requiring the recapture of a section 965(c) deduction by an expatriated entity with the expanded scope of availability of section 965(c) deductions (that is, to a domestic pass-through owner that is not itself a United States shareholder) by requiring recapture of all section 965(c) deductions taken into account by an expatriated entity without regard to whether the expatriated entity was itself a United States shareholder.

*D. Treatment of Section 965(c) Deductions Under Certain Code Provisions*

Consistent with section 3.06 of Notice 2018–26, proposed § 1.965–3(f)(1) provides that a section 965(c) deduction will not be treated as an itemized deduction for any purpose of the Code (including, as described in Notice 2018–26, for purposes of sections 56 and 67).

The Treasury Department and the IRS are aware that the rules of subchapter K and subchapter S may prevent a partner or S corporation shareholder from taking into account its domestic pass-

through owner share of a section 965(c) deduction amount in certain circumstances if allocated by a partnership or S corporation separately from the corresponding section 965(a) inclusion amount, particularly to the extent that a partnership or S corporation makes distributions to one or more partners or shareholders (as the case may be) during the year of its section 965(a) inclusion. *See, e.g.,* section 1366(d). Accordingly, proposed § 1.965–3(f)(2)(i) provides that in the case of a domestic partnership or S corporation, the aggregate amount of its section 965(a) inclusions net of the aggregate amount of its section 965(c) deductions is treated as a separately stated item of net income solely for purposes of calculating basis under section 705(a) and § 1.705–1(a) and section 1367(a)(1) and § 1.1367–1(f). Furthermore, the proposed regulations incorporate the rules concerning basis and AAA adjustments contained in section 965(f)(2) and provide an example illustrating the application of the rules described in this paragraph. *See* proposed § 1.965–3(f)(2)(i)(B), (ii), and (iii).

The proposed regulations clarify whether a United States person that must pay tax under section 1411 on a section 965(a) inclusion is entitled to take into account a section 965(c) deduction for purposes of determining the amount of such tax. Section 965(c) deductions are intended to reduce the rate of income tax to which section 965(a) inclusions are subject. *See* H.R. Rep. No. 115–466, at 620 (2017) (Conf. Rep.). The Treasury Department and the IRS have determined that the section 965(c) deduction was not intended to reduce the rate of tax imposed by non-income tax provisions outside of chapter 1. Accordingly, proposed § 1.965–3(f)(3) provides that for purposes of section 1411 and § 1.1411–4(f)(6), a section 965(c) deduction is not treated as a deduction properly allocable to a corresponding section 965(a) inclusion. Consistent with the rule for section 1411, proposed § 1.965–3(f)(4) provides that a section 965(c) deduction is not treated as an ordinary and necessary expense paid or incurred for the production or collection of gross investment income for purposes of section 4940(c)(3)(A).

## VI. Disregard of Certain Transactions

Proposed § 1.965–4 provides rules that disregard certain transactions for purposes of applying section 965. In particular, proposed § 1.965–4 provides rules that disregard (i) transactions undertaken with a principal purpose of reducing the section 965 tax liability of a United States shareholder, (ii) certain changes in method of accounting and entity classification elections, and (iii) certain transactions occurring between E&P measurement dates.

### *A. Anti-Avoidance Rules*

The proposed regulations provide rules, consistent with section 3.04 of Notice 2018–26, to prevent the avoidance of section 965, including an anti-avoidance rule disregarding certain transactions and rules disregarding certain changes in accounting methods and entity classification elections. *See* proposed § 1.965–4(b) through (e). The application of the anti-avoidance rule is based on whether there is a ''change in the amount of a section 965 element'' rather than a change in the section 965 tax liability, as described in the notice. *See* proposed § 1.965–4(b)(1). For this purpose, generally there is a change in the amount of a section 965 element if there is a reduction of a section 958(a) inclusion amount or aggregate foreign cash position or an increase in deemed paid foreign income taxes as a result of a section 965(a) inclusion. *See* proposed § 1.965–4(d) and (e)(1).

Comments requested that the anti-avoidance rule not apply to the extent a reduction in tax liability by reason of section 965 is offset by an equal amount of tax increase pursuant to a different Code provision. This comment is not adopted. The Conference Report reflects an intent for the Treasury Department and the IRS to address all strategies for avoiding a section 965(a) inclusion, without regard to the effect on overall tax liability. *See* H.R. Rep. No. 115–466, at 619 (2017) (Conf. Rep.). Furthermore, it would be difficult for the IRS to determine whether a particular increase in tax liability for non-section 965 reasons is related to the reduction in the taxpayer's section 965(a) inclusion. Finally, the anti-avoidance rule generally does not apply without a principal purpose of changing the amount of a section 965 element. Depending on the facts and circumstances, transactions that do not reduce overall tax liability may not meet the principal purpose test described in proposed § 1.965–4(b)(1).

Comments also requested a de minimis exception for the anti-avoidance rule. This comment is not adopted. The Treasury Department and the IRS have determined that any reduction in tax imposed by reason of section 965 through tax avoidance strategies occurring after November 2, 2017, is inconsistent with congressional intent and should not be respected.

Comments to Notice 2018–26 requested that the rule disregarding changes to methods of accounting not apply when the change is from an impermissible to a permissible method, and that a principal purpose test should apply. These comments are not adopted. Proposed § 1.965–4(c)(1) does not affect a taxpayer's ability to change its method of accounting, including to change to a permissible method. Instead, the rule disregarding an accounting method change is relevant only for the limited purpose of determining the amount of a taxpayer's section 965 elements.

The choice of a November 2, 2017, measurement date reflects an intent to impose a transition tax on a snapshot of earnings as of a date that coincides with the introduction of the Act in Congress, and reflects a general policy of disregarding taxpayer actions occurring after November 2, 2017, that reduce the taxpayer's liability imposed by reason of section 965, even if such future actions are otherwise respected under the Code. Such actions can include changes in accounting methods, whether to methods that are permissible or impermissible and regardless of the principal purpose for such change. A rule disregarding such changes is also consistent with the Conference Report, which reflects a clear intent for the Treasury Department and the IRS to exercise their authority under section 965(o) to disregard accounting method changes that reduce a taxpayer's tax liability under section 965. *See* H.R. Rep. No. 115–466, at 619 (2017) (Conf. Rep.).

### *B. Disregard of Certain Transactions Occurring Between E&P Measurement Dates*

In section 3.02(a) of Notice 2018–07, the Treasury Department and the IRS announced the intent to issue regulations to address the possibility of double-counting or double non-counting in the computation of post-1986 earnings and profits arising from amounts paid or incurred (including certain dividends) between related specified foreign corporations of a United States shareholder that occur between E&P measurement dates and that would otherwise reduce the post-1986 earnings and profits as of December 31, 2017, of the specified foreign corporation that paid or incurred such amounts. The notice contained examples illustrating fact patterns involving double-counting or double non-counting to be addressed by the future regulations. The proposed regulations provide, consistent with section 3.02(a) of Notice 2018–07, that amounts paid or incurred between related specified foreign corporations of a section 958(a) U.S. shareholder

between E&P measurement dates that would otherwise reduce the post-1986 earnings and profits as of December 31, 2017, of the specified foreign corporation that paid or incurred such amounts are disregarded for purposes of determining the post-1986 earnings and profits of both of the specified foreign corporations as of the E&P measurement date on December 31, 2017. *See* proposed § 1.965–4(f).

A number of comments requested that these rules be expanded to cover other transactions that could lead to double counting and double non-counting in the computation of post-1986 earnings and profits of a specified foreign corporation, including: (i) Deductible payments by a specified foreign corporation to a United States shareholder or to a partnership owned by the United States shareholder; and (ii) distributions by specified foreign corporations to a United States shareholder. The recommendations in these comments are not adopted. The Treasury Department and the IRS have determined that the concerns regarding issues of double counting and double non-counting in the computation of post-1986 earnings and profits of a specified foreign corporation relate to transactions occurring between specified foreign corporations rather than between a specified foreign corporation and a United States shareholder. *See* H.R. Rep. No. 115–466, at 619 (2017) (Conf. Rep.). Payments by a specified foreign corporation to a United States shareholder only affect the post-1986 earnings and profits of a single specified foreign corporation, and thus do not result in double counting in determining a United States shareholder's section 965(a) inclusion amount. Additionally, payments by a specified foreign corporation to a United States shareholder can have attendant U.S. tax effects that do not occur with respect to payments between specified foreign corporations and that would need to be considered if such payments were disregarded. For example, a distribution from a specified foreign corporation to its United States shareholder may permit the United States shareholder to take into account foreign tax credits under section 902 and avoid the limitation under section 965(g)(1) that would apply if the underlying foreign taxes had been deemed paid with respect to the United States shareholder's section 965(a) inclusion amount.

## VII. Foreign Tax Credits

### *A. In General*

Section 14301 of the Act repealed section 902 effective for taxable years of foreign corporations beginning after December 31, 2017, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. The proposed regulations include, in addition to rules under the foreign tax credit specific rules of section 965, rules coordinating the provisions of section 965 with the foreign tax credit provisions as in effect before their repeal or amendment by the Act.

### *B. Allowance of a Credit or Deduction for Foreign Income Taxes*

#### 1. Scope

Section 965(g)(1) provides that no credit is allowed under section 901 for the applicable percentage of any taxes paid or accrued (or treated as paid or accrued) with respect to any amount for which a section 965(c) deduction amount is allowed. The Conference Report does not elaborate on the meaning of ''taxes paid or accrued'' or ''taxes treated as paid or accrued.'' Comments requested clarification of the meaning of these terms and the scope of section 965(g). Under the proposed regulations, ''taxes paid or accrued'' refers to foreign income taxes paid or accrued directly by the taxpayer under section 901, and ''taxes treated as paid or accrued'' includes foreign income taxes deemed paid by the taxpayer under section 960, foreign income taxes allocated to an entity under § 1.901–2(f)(4), and a distributive share of taxes paid by a partnership.

#### 2. Applicable Percentage

The proposed regulations clarify that the term ''applicable percentage'' is determined with respect to a section 958(a) U.S. shareholder and a section 958(a) U.S. shareholder inclusion year. As a result, if a section 958(a) U.S. shareholder has more than one section 958(a) U.S. shareholder inclusion year, the shareholder might have more than one applicable percentage as a result of differing aggregate foreign cash positions for those different section 958(a) U.S. shareholder inclusion years. *See* proposed § 1.965–5(d)(1). In addition, if a person is a domestic pass-through owner with respect to more than one domestic pass-through entity, each of which is a section 958(a) U.S. shareholder, the person might have a different applicable percentage with respect to each of those domestic pass-through entities because of differing aggregate foreign cash positions of those entities, as well as a different applicable percentage with respect to the person's section 958(a) stock, if any. *See* proposed § 1.965–5(d)(2). Therefore, the amount of foreign tax credits disallowed under section 965(g) and proposed § 1.965–5(b) and (c) could differ depending on the section 958(a) U.S. shareholder inclusion year and section 958(a) U.S. shareholder to which the foreign income taxes relate.

#### 3. Foreign Income Taxes Paid or Accrued Directly by Taxpayer

For purposes of section 965(g)(1), foreign income taxes paid or accrued directly by a taxpayer include foreign income taxes imposed on the taxpayer on a distribution of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits. Section 965(g)(3) provides that no deduction is allowed for any tax for which a credit is not allowable under section 901 by reason of section 965(g)(1). The proposed regulations provide that neither a deduction (including under section 164) nor a credit under section 901 is allowed for the applicable percentage of any foreign income taxes paid or accrued with respect to any amount for which a section 965(c) deduction is allowed for a section 958(a) U.S. shareholder inclusion year. The proposed regulations also provide that neither a deduction nor a credit under section 901 is allowed for the applicable percentage of any foreign income taxes attributable to a distribution of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits. *See* proposed § 1.965–5(b).

Accordingly, no deduction or credit is allowed for the applicable percentage of any withholding taxes imposed on a United States shareholder by the jurisdiction of residence of the distributing foreign corporation with respect to a distribution of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits. Similarly, no deduction or credit is allowed for the applicable percentage of net basis taxes imposed on a United States citizen by the citizen's jurisdiction of residence upon receipt of a distribution of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits.

4. Foreign Income Taxes Treated as Paid or Accrued by Taxpayer

i. Section 960(a)(1)

For taxable years of foreign corporations beginning before January 1, 2018, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, section 960(a)(1) provides that, if there is included under section 951(a) in the gross income of a domestic corporation any amount attributable to E&P of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, then, except to the extent provided in regulations, section 902 shall be applied as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)). The proposed regulations provide that a credit under section 901 is not allowed for the applicable percentage of any foreign income taxes treated as paid or accrued under section 960(a)(1) (for taxable years of foreign corporations beginning before January 1, 2018, and to taxable years of United States persons in which or with which such taxable years of foreign corporations end) with respect to any amount for which a section 965(c) deduction is allowed for a section 958(a) U.S. shareholder inclusion year.

ii. Section 960(a)(3)

For a taxable year of a foreign corporation beginning before January 1, 2018, section 960(a)(3) provides that any portion of a distribution from such a foreign corporation received by a domestic corporation which is excluded from gross income under section 959(a) is treated by the domestic corporation as a dividend, solely for purposes of taking into account under section 902 any foreign taxes, on or with respect to the accumulated profits of such foreign corporation from which such distribution is made, which were not deemed paid by the domestic corporation for any prior taxable year.

Accordingly, the proposed regulations provide that the credit allowed under section 960(a)(3) is only with respect to foreign income taxes imposed on an upper-tier foreign corporation on distributions of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits from a lower-tier foreign corporation. *See* proposed § 1.965–5(c)(1)(ii). Furthermore, section 960(a)(3) does not allow a credit for foreign income taxes attributable to the portion of a section 965(a) earnings amount that was reduced pursuant to section 965(b) since such taxes were not imposed on a distribution of previously taxed E&P. Instead, because section 965(b) previously taxed earnings and profits are treated as having been included in a United States shareholder's income under section 951(a), foreign income taxes that would have been deemed paid with respect to section 965(b) previously taxed earnings and profits under section 960(a)(1) had such amounts actually been included in income are treated as having been deemed paid, with the result that no credit is allowed under section 960(a)(3) or any other provision of the Code for such taxes. *Id.*

The proposed regulations also provide that the disallowance under section 965(g) applies to foreign taxes deemed paid under section 960(a)(3) with respect to distributions of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits with respect to a section 958(a) U.S. shareholder inclusion year. For example, if a lower-tier foreign corporation distributes section 965(a) previously taxed earnings and profits to an upper-tier foreign corporation, and the upper-tier foreign corporation pays a foreign withholding tax with respect to the distribution of the section 965(a) previously taxed earnings and profits, such withholding tax would be creditable under section 960(a)(3) upon a distribution by the upper-tier foreign corporation to an eligible domestic corporation. However, the domestic corporation cannot claim a credit for the applicable percentage of such withholding tax. *See* proposed § 1.965–5(c)(ii).

The Act replaces section 960(a)(3) with section 960(b). The proposed regulations only address distributions out of section 965(a) previously taxed earnings and profits and section 965(b) previously taxed earnings and profits in years before the effective date of section 960(b) in the Act. The Treasury Department and the IRS anticipate that future regulations will provide similar rules in connection with new section 960(b).

iii. Disallowance of Deduction

The proposed regulations clarify that no deduction, including under section 164, is allowed for the applicable percentage of any foreign income taxes treated as paid or accrued with respect to any amount for which a section 965(c) deduction is allowed. *See* proposed § 1.965–5(c)(2).

*C. Computation of Foreign Income Taxes Deemed Paid*

1. General Rule and Exception

Comments requested clarification regarding the determination of deemed paid taxes under section 960 in connection with section 965. One comment also requested specific changes to the application of sections 902 and 960 that would permit a taxpayer to reduce the post-1986 undistributed earnings of a DFIC by the amount of any deficit from an E&P deficit foreign corporation that reduced the section 965(a) earnings amount of the DFIC. In general, the proposed regulations confirm that sections 902 and 960 apply in the same manner for section 965(a) inclusions as for other inclusions under section 951(a)(1)(A), and therefore a DFIC's post-1986 undistributed earnings is not reduced by specified E&P deficits from an E&P deficit foreign corporation.

A comment noted that in determining the indirect credit with respect to a section 965(a) inclusion, the numerator of the section 902 fraction (as defined in proposed § 1.965–6(c)(1)) may be greater than the denominator given that the section 965(a) inclusion is determined on one of two measurement dates. For example, if the amount of the accumulated post-1986 deferred foreign income of a DFIC is greater on November 2, 2017, than such amount is on December 31, 2017, the section 965(a) earnings amount of the DFIC will be based on E&P as of the November 2, 2017 date. However, the denominator of the section 902 fraction, post-1986 undistributed earnings, is determined as of the close of the taxable year of the foreign corporation and without diminution by reason of earnings distributed or otherwise included in income during the year. Section 902(c)(1). Where the post-1986 undistributed earnings as of the close of the DFIC's U.S. taxable year is positive, but less than the section 965(a) earnings amount, this could result in a section 902 fraction greater than one.

The section 902 fraction cannot exceed one. *See H.H. Robertson Co.* v. *Commissioner of Internal Revenue,* 59 T.C. 53 (1972), *aff'd* 500 F.2d 1399 (3d Cir. 1974). For the avoidance of doubt, the proposed regulations clarify that when the denominator of the section 902 fraction is positive but less than the numerator of such fraction, the section 902 fraction is one. *See* proposed § 1.965–6(c)(2).

Comments also requested that taxpayers be deemed to pay taxes when the denominator of the section 902 fraction is zero or less than zero, either

by treating the DFIC as having post-1986 undistributed earnings equal to the DFIC's post-1986 foreign income taxes, or by determining the DFIC's post-1986 undistributed earnings as of the measurement date used to determine its section 965(a) earnings amount. This comment is not adopted. The Treasury Department and the IRS have determined that the Act was not intended to alter the application of sections 902 and 960 with respect to section 965. Thus, the proposed regulations confirm that when the denominator of the section 902 fraction is zero or less than zero, no taxes are deemed paid with respect to the section 965(a) inclusion. *See* proposed § 1.965–6(c)(2); *cf.* § 1.902–1(b)(4) (providing that no foreign income taxes are deemed paid in the case of a distribution out of current E&P that is treated as a ''nimble'' dividend under section 316(a)(2) when there is a deficit in accumulated E&P).

Section 965(b)(4)(B), which provides that a United States shareholder's pro rata share of the E&P of any E&P deficit foreign corporation is increased by the amount of the specified E&P deficit of such corporation taken into account by such shareholder by reason of allocation of such deficit to a DFIC, does not indicate whether that increase applies for purposes of determining the post-1986 undistributed earnings in the last taxable year of an E&P deficit foreign corporation that begins before January 1, 2018. The Treasury Department and the IRS have determined that section 965(b)(4)(B) should not apply for purposes of section 902 in that year. Therefore, the proposed regulations provide that post-1986 undistributed earnings of an E&P deficit foreign corporation are increased by reason of section 965(b)(4)(B) or proposed § 1.965–2(d)(2)(i) as of the first day of the foreign corporation's first taxable year following the E&P deficit foreign corporation's last taxable year that begins before January 1, 2018.

Comments also recommended that, to the extent that a hovering deficit is treated as reducing the post-1986 earnings and profits of a DFIC, those taxes should be added to the DFIC's post-1986 foreign income taxes in the inclusion year with respect to the DFIC. The Treasury Department and the IRS have determined that the existing rules adequately address this issue and decline to adopt this comment. The proposed regulations do not provide special rules for foreign income taxes that are related to hovering deficits; as a result, the rules in § 1.367(b)–7 continue to apply with respect to such foreign income taxes.

2. Taxes Deemed Paid in the Case of Certain Lower-Tier Corporations

A credit is allowable under section 960(a)(1) for taxes paid or accrued by a foreign corporation only if it is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation. Section 902(b)(2) states that the term ''qualified group'' does not include any foreign corporation below the third tier in the chain unless the foreign corporation is a CFC and the domestic corporation is a United States shareholder with respect to it. Comments requested clarification as to whether a 10-percent corporation treated as a CFC under section 965(e)(2) for purposes of sections 951 and 961 is treated as a CFC for purposes of section 902(b).

Section 965(e)(2) applies to treat a 10-percent corporation as a CFC solely for purposes of taking into account the subpart F income of such corporation under section 965(a) and for purposes of determining the United States shareholder's pro rata share of the section 965(a) inclusion amount. The proposed regulations also treat a 10-percent corporation as a CFC for other limited purposes. *See* Part I.A of this Explanation of Provisions. However, section 965 does not modify the computation of foreign income taxes deemed paid under sections 902 and 960, or for purposes of any other Code section. Therefore, the proposed regulations clarify that a United States shareholder is not entitled to an indirect credit with respect to a 10-percent corporation that is below the third tier in a chain of foreign corporations of the United States shareholder. *See* proposed § 1.965–1(d).

*D. Allocation and Apportionment of Expenses*

The generally applicable rules of sections 861 through 865 and the regulations thereunder for allocating and apportioning deductions to separate categories of income described in section 904(d)(1) and § 1.904–4(m) apply for purposes of determining the foreign tax credits allowed by reason of a section 965(a) inclusion. For purposes of allocating and apportioning any deductible expense, any tax-exempt asset (and any income from such asset) is not taken into account. *See* section 864(e)(3). A similar rule applies in the case of the portion of any dividend (other than a qualifying dividend as defined in section 243(b)) equal to the deduction allowable under section 243 or 245(a) with respect to such dividend and in the case of a like portion of any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined). The proposed regulations confirm that the allowance of a deduction under section 965(c) with respect to the section 965(a) inclusion does not result in any portion of the section 965(a) inclusion being treated as exempt income. In addition, the assets to which the section 965(a) inclusion relates are not treated as exempt assets under section 864(e)(3) or § 1.861–8T(d).

The proposed regulations also confirm that section 965(a) previously taxed earnings and profits and 965(b) previously taxed earnings and profits, like all previously taxed E&P, do not give rise to exempt treatment under section 864(e)(3). *See* proposed § 1.965–6(d).

Under section 864(e)(4), for purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis in stock of any nonaffiliated 10-percent owned corporation is increased by the E&P accumulated during the period the taxpayer held the stock, or reduced (but not below zero) by deficits in E&P of the corporation attributable to the stock for such period. The purpose for this adjustment is to better approximate the value of such stock. *See* Joint Committee on Tax'n, General Explanation of the Tax Reform Act of 1986 (Pub. L. 99–514) (May 4, 1987), JCS–10–87, at p.87 (adjustment to E&P ''takes account of some changes in value attributable to taxpayer's equity interests in such corporations'').

In order to avoid double counting of previously taxed E&P and the basis adjustments under section 961, section 864(e)(4)(D) provides that proper adjustments must be made to the E&P of a corporation to account for previously taxed E&P and reflected in the adjusted basis of the stock. *See* Joint Committee on Tax'n, General Explanation of the Tax Reform Act of 1986 (Pub. L. 99–514) (May 4, 1987), JCS–10–87, at p.91. Section 1.861–12T(c)(2)(i)(B) provides that a taxpayer's basis in stock of a CFC shall not include any amount included in basis under section 961. At the same time, all E&P (including previously taxed E&P) generally increase the taxpayer's adjusted basis in stock of a CFC.

As a result of the enactment of section 965, the Treasury Department and the IRS recognize that the application of section 965(b)(4)(A) and (B) may warrant the issuance of special rules for the determination of adjusted basis. Furthermore, a different rule may be needed if a taxpayer has made an election under proposed § 1.965–2(f)(2) to adjust its basis to reflect the use of a specified E&P deficit. The Treasury

Department and the IRS request comments on what rules may be appropriate, including whether the rules under § 1.861–12(c)(2) should be modified.

*E. Application of Section 904*

The proposed regulations do not address the assignment of a section 965(a) inclusion and the related taxes to a separate category of income. The Treasury Department and the IRS have determined that the application of section 904 is clear with respect to section 951(a) inclusions regardless of whether the DFIC is a CFC or a 10-percent corporation. Furthermore, the Treasury Department and the IRS have determined that no clarification is necessary with respect to § 1.904–6 for purposes of relating the creditable portion of the foreign income taxes with respect to a section 965(a) inclusion to a separate category of income. For example, withholding tax imposed on a distribution of section 965(a) previously taxed earnings and profits and section 965(b) previously taxed earnings and profits will be related to the separate category of income to which the original section 965(a) inclusion was assigned. *See* § 1.904–6(b)(2) and (c), *Example 7.*

The Treasury Department and the IRS request comments on whether more guidance is necessary with respect to the assignment of the section 965(a) inclusion and the related taxes to a separate category or categories of income.

In addition, comments are requested on whether additional rules are needed for determining the amount of the increase in the section 904 limitation with respect to distributions of section 965(a) previously taxed earnings and profits and section 965(b) previously taxed earnings and profits, taking into account the section 965(c) deduction and the disallowed foreign taxes under section 965(g). *See* section 960(b) (effective with respect to taxable years of foreign corporations beginning before January 1, 2018, and to taxable years of United States shareholders with or within which such taxable years of those foreign corporations end) and section 960(c) for later years.

**VIII. Election, Payment, and Other Special Rules**

*A. In General*

Section 965 provides certain elections that taxpayers can make with respect to the application of section 965. *See* Parts II.K through N of the Background section of this preamble. As discussed in Part II.B.10 of this Explanation of Provisions section and in section 3.05(b) of Notice 2018–26, if the United States shareholder of a DFIC is a domestic pass-through entity and owns section 958(a) stock of the DFIC, then each domestic pass-through owner of the domestic pass-through entity will take into account its share of the section 965(a) inclusion amount with respect to the section 958(a) stock of the DFIC of the domestic pass-through entity and the section 965(c) deduction amount with respect to such amount, regardless of whether the domestic pass-through owner is itself also a United States shareholder with respect to the DFIC. The elections described in Parts II.K through N of the Background section of this preamble under sections 965(h) (the ''section 965(h) election''), 965(m) (the ''section 965(m) election''), and 965(n) (the ''section 965(n) election'') are available to a United States shareholder of a DFIC under the terms of section 965. However, because a domestic pass-through owner will take into account its share of a section 965(a) inclusion amount (and the related section 965(c) deduction amount) whether or not it is itself a United States shareholder, the proposed regulations provide, consistent with section 3.05(b) of Notice 2018–26, that a domestic pass-through owner may make the section 965(h) election, the section 965(m) election, and the section 965(n) election.

*B. Net Tax Liability Under Section 965*

The proposed regulations define a new term, ''total net tax liability under section 965,'' which reflects the definition of net tax liability under section 965 in section 965(h)(6) with respect to a person as if the person were a United States shareholder of all DFICs with respect to which it has section 965(a) inclusions, consistent with section 3.05(c) of Notice 2018–26. *See* proposed § 1.965–7(g)(10). However, the proposed regulations provide that the dividends excluded pursuant to the second prong of the computation (the ''without'' prong) include dividends received directly or through a chain of ownership described in section 958(a). *See* proposed § 1.965–7(g)(10)(i)(B)(*2*).

For purposes of determining a person's total net tax liability under section 965, the proposed regulations also clarify the computation of the foreign tax credit for purposes of the amount described in section 965(h)(6)(A)(ii)(II) and proposed § 1.965–7(g)(10)(i)(B) (the net income tax liability determined without regard to section 965 and dividends from DFICs). Specifically, the proposed regulations provide that the foreign tax credits disregarded in determining net income tax determined under section 965(h)(6)(A)(ii)(II) and proposed § 1.965–7(g)(10)(i)(B) includes the credits for foreign income taxes deemed paid with respect to section 965(a) inclusions or foreign income taxes deemed paid with respect to a dividend, including a distribution that would have been treated as a dividend in the absence of section 965, as well as the credits for foreign income taxes imposed on distributions of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits made in the taxable year in which the person includes a section 965(a) inclusion in income.

*C. Section 965(h) Election*

The proposed regulations provide that the section 965(h) election may be made by any person with a section 965(h) net tax liability (which includes a section 958(a) U.S. shareholder or a domestic pass-through owner in a domestic pass-through entity that is a section 958(a) U.S. shareholder, but not a domestic pass-through entity itself). Under the proposed regulations, the section 965(h) election may be revoked only by paying the full amount of the unpaid section 965(h) net tax liability. *See* proposed § 1.965–7(b)(1). The proposed regulations also provide that a section 965(h) election is made with respect to the section 965(h) net tax liability of a person, which is the person's total net tax liability under section 965 reduced by the aggregate amount of the person's section 965(i) net tax liabilities, if any, with respect to which elections under section 965(i) are effective. *See* proposed § 1.965–7(g)(4).

1. Underpayment of an Installment

As noted in Part II.K of the Background section of this preamble, section 965(h)(3) provides that an addition to tax for failure to timely pay an installment required under section 965(h) is an acceleration event with respect to the unpaid portion of the remaining installments. Section 965(h)(4) provides that if a taxpayer has made an election under section 965(h), and subsequently a deficiency is assessed with respect to the taxpayer's net tax liability for purposes of section 965(h), then the amount of the deficiency will be prorated among the installments.

Comments requested clarification regarding whether the underpayment of an installment (including payment of the first installment that reflects a section 965(h) net tax liability lower than what is calculated on a tax return filed by the extended due date) would constitute an acceleration event under section 965(h)(3) or would result in the

proration under section 965(h)(4) of the difference between the section 965(h) net tax liability initially calculated and the subsequently determined section 965(h) net tax liability. The proposed regulations provide that if a person is assessed a deficiency with respect to the person's section 965(h) net tax liability, or the person timely files a return increasing the amount of its section 965(h) net tax liability above the amount taken into account in the payment of the first installment, or the person files an amended return increasing the amount of its section 965(h) net tax liability, the deficiency or additional amount will be prorated among the installments under section 965(h)(4). This proration rule does not apply if the deficiency or additional liability is due to negligence, intentional disregard of rules and regulations, or fraud with intent to evade tax, in which case, the proposed regulations clarify that the deficiency is payable on notice and demand. *See* proposed § 1.965–7(b)(1)(ii)(C).

A comment also requested guidance regarding whether an underpayment of the first installment would prevent a taxpayer from making an election under section 965(h). The proposed regulations provide that if a taxpayer makes a section 965(h) election and does not pay the correct amount for the first installment, and if the rule in the preceding paragraph applies to prorate the additional liability, the remaining installment payments due pursuant to the section 965(h) election will not be accelerated, and the taxpayer's section 965(h) election will not be affected. *See* proposed § 1.965–7(b)(1)(ii).

2. Acceleration Events

The proposed regulations provide that if a taxpayer makes a section 965(h) election, and subsequently an acceleration event described in section 965(h)(3) and proposed § 1.965–7(b)(3)(ii) occurs, the unpaid portion of all remaining installments of the taxpayer's section 965(h) net tax liability generally will be accelerated and due on the date of the event.

Proposed § 1.965–7(b)(3)(ii) lists the events treated as acceleration events for this purpose. As noted in Section II.K of the Background section of this preamble, acceleration events include an addition to tax for failure to timely pay an installment required under section 965(h), a liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), a cessation of business by the taxpayer, or any similar circumstance. The proposed regulations identify circumstances similar to those referenced in section 965(h)(3). Proposed § 1.965–7(b)(3)(ii)(B) provides that, in addition to a liquidation or sale of substantially all of the assets of a taxpayer, any exchange or other disposition of substantially all of the assets of a taxpayer constitutes an acceleration event. In addition, proposed § 1.965–7(b)(3)(ii)(D) provides that any event that results in a person no longer being a United States person (including, for example, a resident alien becoming a nonresident alien) is an acceleration event. Proposed § 1.965–7(b)(3)(ii)(E) provides that a person that was not a member of any consolidated group becoming a member of a consolidated group is treated as an acceleration event with respect to the person. Proposed § 1.965–7(b)(3)(ii)(F) provides that when a consolidated group ceases to exist, or otherwise no longer files a consolidated return, that constitutes an acceleration event.

A comment requested guidance specifying that the liquidation of a member of a consolidated group, other than the consolidated parent, would not constitute an acceleration event for purposes of section 965(h)(3). Because proposed § 1.965–8(e)(1) provides that all of the members of a consolidated group are treated as a single person for purposes of the section 965(h) election, a liquidation of one member of the group would not constitute an acceleration event for purposes of section 965(h)(3) and proposed § 1.965–7(b).

The proposed regulations provide an exception (the ''eligible section 965(h) transferee exception'') pursuant to which the acceleration provisions of section 965(h)(3) and proposed § 1.965–7(b)(3)(ii) do not apply (such that the unpaid portion of all remaining installments will not be due as of the date specified therein) to a person with respect to which an acceleration event occurs if the requirements described in proposed § 1.965–7(b)(3)(iii)(A)(*1*) (describing the acceleration events eligible for this exception) and (*2*) (setting forth the terms of a required transfer agreement) are satisfied.

Generally, acceleration events eligible for this exception include (i) liquidations, sales, exchanges, or other dispositions of substantially all of the assets of a person (with the exception of, in the case of an individual, by reason of death, and with special rules applying in the case of a consolidated group), (ii) a corporation that was not a member of any consolidated group becoming a member of a consolidated group, and (iii) a consolidated group ceasing to exist by reason of acquisition and immediately joining another consolidated group. In each case, the exception applies only to the extent that the person with respect to which an acceleration event occurs (an ''eligible section 965(h) transferor'') and an eligible section 965(h) transferee (generally, a United states person that is not a domestic pass-through entity and that satisfies certain requirements set forth in the proposed regulations) enter into a transfer agreement described in proposed § 1.965–7(b)(3)(iii)(B).

Generally, a transfer agreement must include various acknowledgments, representations, and information, including an agreement by the eligible section 965(h) transferee to assume the liability of the eligible section 965(h) transferor for any unpaid installment payments of the eligible section 965(h) transferor under section 965(h); an agreement that the eligible section 965(h) transferee agrees to comply with all of the conditions and requirements of section 965(h) and proposed § 1.965–7(b), as well as any other applicable requirements in the section 965 regulations; a representation that the eligible section 965(h) transferee is able to make the remaining payments required under section 965(h) and proposed § 1.965–7(b) with respect to the section 965(h) net tax liability being assumed; and, if the eligible section 965(h) transferor continues to exist immediately after the acceleration event, an acknowledgement that the eligible section 965(h) transferor and any successor to the eligible section 965(h) transferor will remain jointly and severally liable for any unpaid installment payments of the eligible section 965(h) transferor under section 965(h), including, if applicable, under § 1.1502–6. *See* proposed § 1.965–7(b)(3)(iii)(B)(*4*). The proposed regulations also provide procedural rules regarding the completion and submission of a transfer agreement, as well as rules relating to the Commissioner's review of such agreements. *See generally* proposed § 1.965–7(b)(3)(iii)(B) and (C).

3. Election Mechanics

Section 965(h)(5) provides that a section 965(h) election must be made no later than the due date (taking into account extensions, if any) for the return for the taxable year in which the taxpayer has the section 965(a) inclusions to which the section 965(h) net tax liability is attributable and must be made in the manner prescribed by the Secretary. A comment requested that taxpayers with section 965(a) inclusions be treated as having made a section 965(h) election by default. The Treasury Department and the IRS decline to adopt this comment because the statute

provides for an affirmative election, and the proposed regulations provide an extended period in which to make it. Under proposed § 1.965–7(b)(2)(ii), a section 965(h) election must be made no later than the due date taking into account extensions, if any, or any additional time that would have been granted if the person had made an extension request, without regard to whether an extension request was made. The election is made by attaching a statement, signed under penalties of perjury, to the taxpayer's return for the relevant taxable year including the taxpayer's name, taxpayer identification number, total net tax liability under section 965, section 965(h) net tax liability, section 965(i) net tax liability with respect to which a section 965(i) election is effective (if applicable), and anticipated amounts of each installment. Proposed § 1.965–7(b)(2)(iii).

4. Application to Non-Chapter 1 Taxes

Comments requested that the Treasury Department and the IRS provide that tax imposed under section 1411 on section 965(a) inclusions be payable in installments under section 965(h). However, because the definition of net income tax in section 965(h)(6)(B) refers to credits allowed under subparts A, B, and D of part IV of subchapter A of chapter 1 of subtitle A of the Code, the Treasury Department and the IRS have determined that section 965(h) applies only with respect to tax imposed under subchapter A of chapter 1 of subtitle A of the Code. Accordingly, elections may not be made under section 965(h) to pay tax imposed under other subchapters or chapters (such as, for example, the taxes imposed under sections 1411 and 4940) in eight installments. *See also* sections 55(a)(2) and 26(b)(2) (excluding the minimum tax under section 55 from the definition of regular tax).

*D. Section 965(i) Election*

As discussed in Part II.L of the Background section of this preamble, section 965(i) provides that a shareholder of an S corporation that is itself a United States shareholder of a DFIC may elect to defer payment of its net tax liability under section 965 with respect to such S corporation until the shareholder's taxable year which includes a triggering event with respect to such liability. The proposed regulations provide guidance regarding how an S corporation shareholder can make a section 965(i) election and, consistent with section 3.05(b) of Notice 2018–26, provide that any shareholder of an S corporation that is a United States shareholder of a DFIC, whether it owns section 958(a) stock of such DFIC or not, may make the election. However, if the S corporation is not a United States shareholder with respect to a DFIC, the shareholders of that S corporation may not make a section 965(i) election for their shares of the section 965(a) inclusion or section 965(c) deduction with respect to that DFIC. *See* proposed § 1.965–7(c) and (g)(6).

Furthermore, the proposed regulations implement the statutory reporting requirements in section 965(i)(7) until the section 965(i) net tax liability is fully assessed. *See* proposed § 1.965–7(c)(6).

1. Election Mechanics

The proposed regulations provide procedural rules regarding how an S corporation shareholder can make the section 965(i) election. A section 965(i) election must be made no later than the due date (taking into account extensions, if any) for the S corporation shareholder's return for the taxable year that includes the last day of the taxable year of the S corporation in which the S corporation has a section 965(a) inclusion to which the shareholder's section 965(i) net tax liability is attributable by attaching a statement, signed under penalties of perjury, to its return for that year. The statement must include the shareholder's name, taxpayer identification number, the name and taxpayer identification number of the S corporation with respect to which the election is made, the amount described in § 1.965–7(g)(10)(i)(A) as modified by § 1.965–1(f)–7(g)(6) for purposes of determining the section 965(i) net tax liability with respect to the S corporation, the amount described in § 1.965–7(g)(10)(i)(B), and the section 965(i) net tax liability with respect to the S corporation. *See* proposed § 1.965–7(c)(2)(ii) and (iii).

2. Triggering Events

The proposed regulations also provide rules concerning triggering events described in section 965(i)(2). An event will not be treated as a triggering event (such that a shareholder's section 965(i) net tax liability with respect to an S corporation will not be assessed as an addition to tax for the shareholder's taxable year that includes the triggering event) if the triggering event is the transfer of any share of stock of the S corporation by the shareholder (including by reason of death or otherwise), and the shareholder (an ''eligible section 965(i) transferor'') and an eligible section 965(i) transferee (a United States person that is not a domestic pass-through entity) enter into a transfer agreement. *See generally* proposed § 1.965–7(c)(3)(iv); *see also* § 1.965–7(c)(4)(iv)(B)(*4*) (setting forth the required terms of a transfer agreement).

3. Consent for Section 965(h) Election in the Event of a Triggering Event

The proposed regulations also provide rules for an S corporation shareholder to obtain the consent of the Secretary to make a section 965(h) election in the event of a triggering event that is a liquidation, sale, exchange, or other disposition of substantially all of the assets of the S corporation (including in a title 11 or similar case), a cessation of business by the S corporation, or the S corporation ceasing to exist. *See* proposed § 1.965–7(c)(3)(v)(D). To obtain consent, the shareholder intending to make the section 965(h) election must file the agreement described in proposed § 1.965–7(c)(3)(v)(D)(*4*) and must provide, with its timely-filed return for the taxable year during which the triggering event occurs (taking into account extensions, if any), the election statement for the section 965(h) election. *See* proposed § 1.965–7(c)(3)(v)(D)(*2*). For the required terms of the agreement, see generally proposed § 1.965–7(c)(3)(v)(D).

A comment requested guidance specifying that if an S corporation shareholder makes a section 965(i) election, the S corporation's income inclusion is not deferred, and the S corporation's AAA should be increased by the gross amount (and not the net amount after the application of the section 965(c) deduction). Because, by its terms, a section 965(i) election affects only the timing of assessment and payment of an S corporation shareholder's section 965(a) net tax liability and not the timing or amount of the section 965(a) inclusion of either the S corporation or the S corporation shareholder, the Treasury Department and the IRS have determined that it is not necessary that the proposed regulations provide this additional guidance. See Part V.D of this Explanation of Provisions section for a discussion of the consequences of section 965(a) inclusions and section 965(c) deductions for the AAA of an S corporation.

*E. Section 965(m) Election*

The proposed regulations provide procedural rules regarding how a REIT can make the section 965(m) election. A REIT makes a section 965(m) election by attaching a statement, signed under penalties of perjury, to its return for the taxable year in which it would

otherwise be required to include REIT section 965 amounts (as defined in proposed § 1.965–7(g)(2)) in gross income. The statement must include the REIT's name, taxpayer identification number, REIT section 965 amounts, and anticipated amounts of each portion of the REIT section 965 amounts to be included in each year. Proposed § 1.965–7(d)(3)(ii) and (iii). With respect to a REIT that has made the section 965(m) election, adjustments described in proposed § 1.965–2 to the E&P of any specified foreign corporations held by the REIT, and the basis of stock of a specified foreign corporation and other applicable property held by a REIT, are made as of the close of each year in which an installment is included in the gross income of the REIT. A comment requested that RICs also be allowed to make a similar election to include any amount required to be taken into account under section 951(a)(1) by reason of section 965 in eight installments. This comment is not adopted because the statute provides the election solely for REITs.

For the reasons discussed in Part VIII.A of this Explanation of Provisions section, the proposed regulations also provide that no section 965(a) inclusions of a REIT are taken into account as gross income for purposes of section 856(c)(2) and (3), regardless of whether the REIT is a United States shareholder with respect to the DFIC with respect to which it has a section 965(a) inclusion. See section 965(m)(1)(A) and proposed § 1.965–7(d)(6).

*F. Section 965(n) Election*

As discussed in Part II.N of the Background section of this preamble, section 965(n) provides that a United States shareholder of a DFIC may elect to exclude the amount described in section 965(n)(2) from the determination of the amount of the NOL deduction under section 172 of such shareholder for such taxable year or the amount of taxable income for such taxable year which may be reduced by NOL carryovers or carrybacks to such taxable year under section 172. The proposed regulations provide procedural rules regarding how a taxpayer may make the section 965(n) election, clarify the effect of the election, and provide that the election is irrevocable.

1. Scope of Election

As discussed in section 3.05(d) of Notice 2018–26, comments have requested clarification regarding the scope of the section 965(n) election as a result of the use of the term ''deduction'' in section 965(n)(1)(A). An NOL ''deduction'' for a taxable year generally refers to the amount of an NOL carried to such taxable year from a prior or subsequent year rather than the NOL arising from such year. *Compare* section 172(a) and (c). However, interpreting ''deduction'' in section 965(n)(1)(A) to refer to carryovers or carrybacks to the taxable year (and not the NOL for the taxable year) would cause that paragraph to be duplicative of section 965(n)(1)(B), which already provides that amounts described in section 965(n)(2) are disregarded for purposes of applying NOL carryovers or carrybacks to such taxable year under section 172. The Treasury Department and the IRS have determined that section 965(n)(1)(A) was intended to apply to a different set of losses than those to which section 965(n)(1)(B) applies. A comment also requested clarification regarding whether taxpayers could make the section 965(n) election for only a portion of their NOLs. The Treasury Department and the IRS have determined that the election was intended to apply to the NOL amount in its entirety. Accordingly, the proposed regulations provide that if a section 965(n) election is made for a taxable year, the election applies to NOLs for the taxable year for which the election is made as well as the NOL carryovers or carrybacks to such taxable year, each in their entirety. *See* proposed § 1.965–7(e)(1)(iii).

A comment also requested clarification regarding whether consolidated groups could make the section 965(n) election. The proposed regulations clarify that the section 965(n) election also applies to all components of the consolidated NOL deduction (as defined in § 1.1502–21(a)). *Id.*

2. Election Mechanics

A person makes a section 965(n) election by attaching a statement, signed under penalties of perjury, to its return for the taxable year (taking into account extensions, if any) to which the election applies. Proposed § 1.965–7(e)(2)(ii). The statement must include the person's name, taxpayer identification number, the amounts described in section 965(n)(2)(A) and proposed § 1.965–7(e)(1)(ii)(A) and section 965(n)(2)(B) and proposed § 1.965–7(e)(1)(ii)(B), and the sum thereof. Proposed § 1.965–7(e)(2)(iii).

*G. Election To Use Alternative Method for Calculation of Post-1986 Earnings and Profits*

Under section 965(a) and (d)(3), a United States shareholder of a specified foreign corporation must determine its accumulated post-1986 deferred foreign income as of either of the two E&P measurement dates (November 2, 2017, and December 31, 2017) by determining its post-1986 earnings and profits as of each of those dates. As discussed in section 3.02 of Notice 2018–13, it may be impractical for some taxpayers to determine the post-1986 earnings and profits of a specified foreign corporation as of the November 2, 2017, E&P measurement date because it does not fall on the last day of a month. Therefore, the proposed regulations provide that an election may be made to determine the post-1986 earnings and profits of a specified foreign corporation using the alternative method. *See* proposed § 1.965–7(f).

Under the alternative method, for a specified foreign corporation other than a specified foreign corporation with a 52–53-week taxable year (as described in § 1.441–2(a)(1)), the amount of its post-1986 earnings and profits as of the November 2, 2107, E&P measurement date equals the sum of (1) the specified foreign corporation's post-1986 earnings and profits as of October 31, 2017, and (2) the specified foreign corporation's ''annualized earnings and profits amount.'' For this purpose, the term ''annualized earnings and profits amount'' means the amount equal to the product of two (the number of days after October 31, 2017, and on or before the measurement date on November 2, 2017) and the ''daily earnings amount'' of the specified foreign corporation. The ''daily earnings amount'' of the specified foreign corporation is the post-1986 earnings and profits (including a deficit) of the specified foreign corporation as of the close of October 31, 2017, that were accumulated during the specified foreign corporation's taxable year that includes October 31, 2017, divided by the number of days that have elapsed in that taxable year as of the close of October 31, 2017. A specified foreign corporation that does not have a 52–53-week taxable year may not use the alternative method to determine its post-1986 earnings and profits as of the December 31, 2017, measurement date. *See* proposed § 1.965–7(f)(1), (3), and (4).

For a specified foreign corporation that has a 52–53-week taxable year, an election to use the alternative method applies to both measurement dates, in each case determining the post-1986 earnings and profits consistent with the method described in the previous paragraph as of the closest end of a fiscal month to each measurement date. For example, if the closest end of a fiscal month of a specified foreign

corporation that has a 52–53-week taxable year occurs after a measurement date, the annualized earnings amount is subtracted from (rather than added to) the post-1986 earnings and profits of the specified foreign corporation as of the fiscal month end. *See* proposed § 1.965–7(f)(2), (3), and (4). See proposed § 1.965–7(f)(5) for details on how to make the election.

A comment requested that individuals be permitted to calculate post-1986 earnings and profits by prorating E&P for the November 2, 2017, measurement date based on year-end numbers. This comment is not adopted. Allowing individuals to use year-end numbers and prorate to November 2, 2017, would allow taxpayers to base their post-1986 earnings and profits for both dates on the E&P as of a single date, contrary to the intent of the two E&P measurement dates in the statute.

## IX. Affiliated Groups (Including Consolidated Groups)

Proposed § 1.965–8 provides rules for applying section 965 and the section 965 regulations to members of an affiliated group (as defined in section 1504(a)), including members of a consolidated group (as defined in § 1.1502–1(h)).

### *A. Treatment of Consolidated Groups*

#### 1. Treated as a Single United States Shareholder

The proposed regulations provide that all members of a consolidated group that are section 958(a) U.S. shareholders of a specified foreign corporation are treated as a single section 958(a) U.S. shareholder for purposes of section 965(b) and proposed § 1.965–1(b)(2), and that all members of a consolidated group are treated as a single person for purposes of paragraphs (h), (k), and (n) of section 965 and proposed § 1.965–7. *See* proposed § 1.965–8(e). Thus, for example, the determination of whether the sale of assets by a member of a consolidated group to a non-member would constitute a sale of substantially all of the assets of the taxpayer for purposes of causing an acceleration event under section 965(h)(3) and proposed § 1.965–7(b)(3) takes into account all of the assets of the consolidated group, which for purposes of this determination, includes all of the assets of each consolidated group member (but generally does not include the stock of another consolidated group member).

This rule does not apply to treat all members of a consolidated group as a single section 958(a) U.S. shareholder or single person, as applicable, for purposes of determining the amount of any member's inclusion under section 951 (including a section 965(a) inclusion), any member's section 965(c) deduction, or any purpose other than those specifically listed in proposed § 1.965–8(e)(1). The proposed regulations also clarify that for purposes of computing the foreign income taxes deemed paid with respect to a section 965(a) inclusion, the foreign income taxes deemed paid must be computed on a separate member basis. Therefore, a domestic corporation is not deemed to pay any foreign income taxes with respect to a section 965(a) inclusion from a foreign corporation that is not a member of a qualified group with respect to the domestic corporation, even if other members of the domestic corporation's consolidated group qualify to compute deemed paid credits with respect to that foreign corporation. Sections 960(a)(3), 902(b).

#### 2. Aggregate Foreign Cash Position of a Member of a Consolidated Group

For purposes of computing a member's section 965(c) deduction, the member's aggregate foreign cash position generally is determined by reference to its pro rata share of the consolidated group's aggregate foreign cash position as a whole. Specifically, the proposed regulations provide that the aggregate foreign cash position with respect to a section 958(a) U.S. shareholder that is a member of a consolidated group equals the aggregate section 965(a) inclusion amount of the section 958(a) U.S. shareholder multiplied by the group cash ratio of the consolidated group. For this purpose, the term ''group cash ratio'' means the ratio of the consolidated group aggregate foreign cash position (generally, the sum of the aggregate foreign cash positions of the members of a consolidated group) to the sum of the aggregate section 965(a) inclusion amounts of all members of the consolidated group. *See* proposed § 1.965–8(e)(3), (f)(4), and (f)(8).

#### 3. Adjustments to E&P and Stock Basis

As described in section 3.04 of Notice 2018–07, the proposed regulations indicate that the regulations under § 1.1502–32 provide for adjustments to the basis of the stock of each member of the consolidated group. *See* proposed § 1.965–8(d)(2).

### *B. Affiliated Groups*

The proposed regulations include guidance regarding the application of section 965(b)(5) to determine the section 965(a) inclusion amounts of a member of an affiliated group. Proposed § 1.965–8(b) applies when, after the application of the rules in proposed § 1.965–1(b)(2) (which generally implements the operative rule of section 965(b)(1)), a section 958(a) U.S. shareholder is both an E&P net surplus shareholder and a member of an affiliated group in which not all members are members of the same consolidated group. When proposed § 1.965–8(b) applies, the U.S. dollar amount of a section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of a DFIC is reduced (but not below zero) by the DFIC's allocable share of the section 958(a) U.S. shareholder's applicable share of the affiliated group's aggregate unused E&P deficit. The proposed regulations include rules and definitions for determining, respectively, a DFIC's allocable share and a section 958(a) U.S. shareholder's applicable share of an affiliated group's aggregate unused E&P deficit. *See* proposed § 1.965–8(f)(2) and (3).

For purposes of this rule, if some but not all members of an affiliated group are properly treated as members of a consolidated group, then the consolidated group is treated as a single member of the affiliated group. Proposed § 1.965–8(b)(2).

### *C. Source of Aggregate Unused E&P Deficits*

Proposed § 1.965–8(c) provides guidance for designating the source of an aggregate unused E&P deficit of an affiliated group that is not a consolidated group when, generally, the amount of the affiliated group's aggregate unused E&P deficit exceeds the aggregate section 965(a) inclusion amounts of E&P net surplus shareholders of the affiliated group determined without regard to the application of section 965(b)(5) and proposed § 1.965–8(b)). Generally, when proposed § 1.965–8(c) applies, each member of an affiliated group that is an E&P net deficit shareholder must designate by maintaining in its books and records a statement (identical to the statement maintained by all other such members of the affiliated group) setting forth the portion of its excess aggregate foreign E&P deficit that is taken into account by one or more net E&P net surplus shareholders of the affiliated group.

If some but not all members of an affiliated group are properly treated as members of a consolidated group, then the consolidated group is treated as a single member of the affiliated group for purposes of this rule. Proposed § 1.965–8(c)(2).

## X. Application of Section 986(c)

The proposed regulations provide that, for purposes of section 986(c), foreign currency gain or loss with respect to distributions of section 965(a) previously taxed earnings and profits is determined based on movements in the exchange rate between December 31, 2017, and the date on which such E&P are actually distributed. *See* proposed § 1.986(c)–1(a).

Consistent with section 3.05 of Notice 2018–07, the proposed regulations also provide that any gain or loss recognized under section 986(c) with respect to distributions of section 965(a) previously taxed earnings and profits is reduced in the same proportion as the reduction by a section 965(c) deduction amount of the section 965(a) inclusion amount that gave rise to such section 965(a) previously taxed earnings and profits, consistent with the statute and other indicia of congressional intent. *See* H.R. Rep. No. 115–466, at 620 (2017) (Conf. Rep.), and proposed § 1.986(c)–1(b).

Because section 965(b) previously taxed earnings and profits are not included in gross income under section 951(a)(1), the Treasury Department and the IRS have determined it would not be appropriate to apply section 986(c) with respect to distributions of those E&P. Therefore, proposed § 1.986(c)–1(c) provides that section 986(c) does not apply with respect to distributions of section 965(b) previously taxed earnings and profits.

## XI. Other Comments

### *A. Repeal of Section 958(b)(4)*

Effective for the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent year, and for the taxable years of United States shareholders in which or with which such taxable years of the foreign corporations end, the Act repealed section 958(b)(4). Before repeal, section 958(b)(4) provided that subparagraphs (A), (B), and (C) of section 318(a)(3) were not to be applied to consider a United States person to own stock which is owned by a person who is not a United States person. As discussed in Part III.B of the Background section of this preamble, the subparagraphs of section 318(a)(3) generally attribute stock owned by a person to a partnership, estate, trust, or corporation in which such person has an interest (so-called ''downward'' attribution).

Multiple comments requested guidance be issued addressing the repeal of section 958(b)(4). This issue is beyond the scope of the proposed regulations.

However, consistent with section 5.02 of Notice 2018–13, the instructions to Form 5471 will be amended to provide an exception from certain filing requirements for a United States person that is a United States shareholder with respect to a CFC or other specified foreign corporation if no United States shareholder (including the United States person) owns, within the meaning of section 958(a), stock of the CFC or other specified foreign corporation, and the foreign corporation is a CFC or specified foreign corporation solely because a United States person is considered to own the stock of the CFC or other specified foreign corporation owned by a foreign person under section 318(a)(3). Consistent with section 6 of Notice 2018–13 and section 7 of Notice 2018–26, taxpayers may rely on this exception with respect to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent year of the foreign corporation, and for the taxable years of a United States shareholder in which or with which these taxable years of the foreign corporation end.

### *B. Reporting and Filing*

#### 1. Section 965 Reporting and Filing Requirements

The proposed regulations provide guidance regarding filing and reporting with respect to section 965(h) elections, section 965(i) elections, section 965(m) elections, and section 965(n) elections, as well as the election to use the alternative method to calculate post–1986 earnings and profits. In addition, the relevant forms and instructions will be updated, as necessary, for taxpayers to properly report amounts under section 965 and the proposed regulations. For the 2017 tax year, instructions for how and when to properly report section 965-related amounts and file returns reporting such amounts, as well as instructions for how and when to make payments with respect to a net tax liability under section 965, were provided in Frequently Asked Questions (FAQs) that are available at the IRS website. The FAQs were posted on March 13, 2018, and updated on April 13, 2018, and June 4, 2018.

#### 2. Extensions

Comments requested an extension of time for reporting and paying section 965-related amounts and an extension of time for making the section 965(h) election. The statute provides for an extended time to file returns reporting section 965-related amounts and to make applicable elections. In addition, with the section 965(h) election, the statute provides a method for taxpayers to delay payment of the total net tax liability under section 965. Furthermore, as discussed in Part VIII.C.3 of this Explanation of Provisions section, the proposed regulations provide that a taxpayer eligible to make a section 965(h) election may make the election on its timely-filed return taking into account extensions, if any, or any additional time that would have been granted if the person had made an extension request. In addition, as described in section 3.05(e) of Notice 2018–26, the proposed regulations provide that for a person who is a specified individual (as defined in proposed § 1.965–7(g)(9)) for the year within which an installment payment would be required to be made who makes a section 965(h) election and who otherwise receives an extension of time to file and pay under § 1.6081–5(a)(5) or (6), the due date for an installment payment will be the fifteenth day of the sixth month following the close of the prior taxable year, regardless of whether the person was a specified individual for the year of the person's section 965(a) inclusion. *See* proposed § 1.965–7(b)(1)(iii)(B). Moreover, the IRS has announced relief from additions to tax (and related acceleration events under section 965(h)(3)) for certain individual filers that do not timely pay their first installment of tax due with respect to the 2017 tax year under section 965(h). For more information, see ''Questions and Answers about Reporting Related to Section 965 on 2017 Tax Returns,'' Q&A 16, available at *https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns.* Thus, comments requesting additional extensions are not adopted.

### *C. Individuals*

#### 1. In General

Numerous comments were received requesting guidance exempting individuals from the application of section 965. The statute is clear that section 965 applies to all United States shareholders. In addition, the Conference Report makes clear that section 965 applies to individuals as well as corporate shareholders by providing, ''In contrast to the participation exemption deduction [in section 245A] available only to domestic corporations that are U.S. shareholders under subpart F, the transition rule applies to all U.S. shareholders.'' H.R. Rep. No. 115–466, at 606 (2017) (Conf. Rep.). Because the statute and legislative

history are clear that section 965 was intended to apply to all United States shareholders, including individuals, the Treasury Department and the IRS have determined that providing the requested relief is not appropriate.

2. Rates of Tax on Section 965(a) Inclusions

Comments also requested that guidance be provided changing the application of the participation exemption to individuals. As discussed in Part II.E of the Background section of this preamble, the amount of the participation exemption depends on the application of the United States shareholder's 8 percent rate equivalent percentage (as defined in section 965(c)(2)(A) and proposed § 1.965–1(f)(2)) and its 15.5 percent rate equivalent percentage (as defined in section 965(c)(2)(B) and proposed § 1.965–1(f)(4)). Both the 8 percent rate equivalent percentage and the 15.5 percent rate equivalent percentage are based off of the highest rate of tax specified in section 11, which is applicable to corporations. As a result, when the participation exemption is calculated for individuals, the applicable rates of tax may not be 8 percent and 15.5 percent.

However, this result was anticipated by Congress. The Conference Report provides, ''Individual U.S. shareholders, and the investors in U.S. shareholders that are pass-through entities generally can elect application of corporate rates for the year of inclusion.'' H.R. Rep. No. 115–466, at 620 (2017) (Conf. Rep.). As discussed in Part III of this Explanation of Provisions section, individuals may make an election under section 962 to have the tax imposed under chapter 1 on amounts that are included in the individual's gross income under section 951(a) with respect to a foreign corporation with respect to which it is a United States shareholder be equal to the tax that would be imposed under section 11 if the amounts were received by a domestic corporation. Accordingly, because of the availability of the section 962 election and Congress's express intent with respect to the rate equivalent percentages, these comments are not adopted.

*D. Determination of Aggregate Foreign Cash Position*

1. Liquidity-Based Exceptions

A number of comments were received requesting guidance modifying the definition of a specified foreign corporation's cash position or the calculation of a United States shareholder's aggregate foreign cash position. For example, comments requested guidance excluding certain assets from a specified foreign corporation's cash position, or otherwise providing special rules with respect to those assets, including (i) cash used, or intended to be used, to fund foreign acquisitions; (ii) blocked, restricted, or segregated cash; (iii) cash used, or to be used, to pay third-party payables within a specified period (for example, 12 months after a cash measurement date); (iv) obligations with respect to which there was an inclusion under section 956; (v) cash held in a fiduciary or trust capacity; (vi) cash held or attributable to an entity that is engaged in a regulated industry, such as life insurance; and (vii) cash pledged against defined liabilities as well as potential or contingent liabilities. In addition, comments requested exceptions for commodities representing inventory or supplies and stock of a publicly traded company in which the specified foreign corporation holds at least 10 percent of the stock, each of which is personal property of a type that is actively traded and for which there is an established financial market, and thus included in the cash position of a specified foreign corporation.

In general, these comments are premised on the view that an asset that otherwise would be included in the cash position of a specified foreign corporation should be excluded to the extent that the asset cannot be otherwise employed; that is, if the asset is not sufficiently ''liquid.'' Although the legislative history describing a specified foreign corporation's cash position refers to earnings that are ''liquid,'' neither the legislative history nor the statute indicates that the cash position of a specified foreign corporation should be determined by reference to an analysis of whether any particular asset should be considered a liquid asset. *See, e.g.,* Senate Committee on Finance, Explanation of the Bill, at 360–361 (November 22, 2017) (''The cash position of an entity consists of all cash, net accounts receivables, and the fair market value of similarly liquid assets, specifically including personal property that is actively traded on an established financial market . . . , government securities, certificates of deposit, commercial paper, and short-term obligations.''). Instead, as the Conference Report notes, the statute includes a specific list of assets that are included in the cash position of a specified foreign corporation.

The Treasury Department and the IRS have determined that the definition of cash position in section 965(c)(3)(B) is the best indication of what Congress believed was a liquid asset. Depending on the facts, any particular asset may be required to be used for a specific purpose, or a taxpayer may intend to retain the asset for a lengthy period of time. However, the Treasury Department and the IRS have determined that it would not be administrable to create individual regulatory exceptions to the statute in the absence of a statutory standard for liquidity because it would likely require introducing a facts-and-circumstances test that analyzes the liquidity of every asset, which would be difficult to administer. Furthermore, while some assets that would otherwise be treated as cash-equivalent assets could be excluded from a specified foreign corporation's cash position for being insufficiently liquid, other assets that are not treated as cash-equivalent assets but are liquid would need to be included in a specified foreign corporation's cash position. Accordingly, the proposed regulations do not introduce new regulatory exceptions to the definition of cash position. The Treasury Department and the IRS welcome comments with respect to the definition of cash position of a specified foreign corporation.

2. Other Modifications Requested to Statutory Rules

Comments also requested modifications to the rules regarding the calculation of a specified foreign corporation's cash position or a United States shareholder's aggregate foreign cash position, including requests that (i) accounts payable be allowed to offset both accounts receivable and other components of a specified foreign corporation's cash position; (ii) the pro rata share of cash held through a pass-through entity be limited to the amount of cash that a specified foreign corporation would have been entitled to on liquidation of the pass-through entity; (iii) the cash position be reduced by section 301(c) cash distributions by the specified foreign corporation when using the average of the aggregate cash positions on the first two cash measurement dates; and (iv) the cash position be reduced by undistributed previously taxed E&P. The Treasury Department and the IRS have determined that the statute is unambiguous as to how, in each of these circumstances, a specified foreign corporation's cash position or a United States shareholder's aggregate foreign cash position should be determined, such that it is unnecessary to provide guidance or to revise the operation of

the statute by regulation under these circumstances.

3. Notional Cash Pooling Arrangements

Comments requested that the proposed regulations provide that notional cash pooling arrangements are treated as creating intercompany receivables for purposes of section 965. The proposed regulations do not adopt this recommendation. The determination of whether transactions in a notional cash pooling arrangement are treated as occurring among participants in the arrangement, or between the participants and a third party, depends on the application of federal income tax principles. *Cf.* Rev. Rul. 87–89, 1987–2 C.B. 195.

4. Non-Corporate Entities Under Section 965(c)(3)(E)

A comment requested clarification regarding whether section 965(c)(3)(E), which treats a non-corporate entity held by a specified foreign corporation as a specified foreign corporation (if it would otherwise be a specified foreign corporation if it was a foreign corporation) for purposes of taking into account its cash position, applies to an entity that is disregarded as an entity separate from its owner for U.S. federal income tax purposes (''disregarded entity''). The Treasury Department and the IRS have determined that it is clear under existing law that the assets of a disregarded entity are considered as held directly by the disregarded entity's owner, such that the rule in section 965(c)(3)(E) does not apply with respect to disregarded entities, and no specific rules addressing the application of section 965(c)(3)(E) are necessary. *See generally* § 301.7701–2(a).

*E. Blocked Foreign Income*

Comments requested that the proposed regulations provide rules with respect to income subject to certain exchange controls or other foreign legal restrictions. Generally, section 964(b) and § 1.964–2 (the blocked foreign income rules) provide that no part of the E&P of a CFC are included in the CFC's E&P for purposes of sections 952 and 956 if it is established to the satisfaction of the Secretary that the E&P could not have been distributed by the CFC to United States shareholders that own the stock of the CFC due to currency or other foreign legal restrictions. Section 965(a) inclusion amounts are not, however, limited by section 952, such that the blocked foreign income rules do not affect the determination of such amounts. Comments requested that the proposed regulations adopt rules similar to the blocked foreign income rules for purposes of section 965 by reducing the post-1986 earnings and profits of a specified foreign corporation by an amount equal to any amounts subject to restrictions on distributions by a specified foreign corporation.

The Treasury Department and the IRS have determined that it is not appropriate to provide rules similar to the blocked foreign income rules for purposes of computing post-1986 earnings and profits. Section 965(d)(3) expressly provides that the term post-1986 earnings and profits means E&P ''computed in accordance with section 964(a) and 986,'' giving rise to a clear inference that the principles of section 964(b) should not be given effect in computing post-1986 earnings and profits.

*F. Additional Comments*

Several other comments were received that did not pertain to section 965 or were otherwise outside the scope of the section 965 regulations. Some of those comments related to reporting and payment requirements and have been addressed in the FAQs that are available at the IRS website. Other comments that did not relate to the rules described in Notices 2018–07, 2018–17, or 2018–26 or that were outside the scope of this notice of proposed rulemaking are not addressed in this preamble. In addition, other comments were received after the proposed regulations had been substantially developed, such that the Treasury Department and the IRS did not have time to fully consider the comments. The Treasury Department and the IRS will include these comments in the administrative record for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register** and fully consider the comments in connection with finalization of the proposed regulations.

## XII. Applicability Dates

Consistent with the applicability date of section 965, as amended by the Act, under section 7805(b)(2), the proposed regulations generally apply beginning the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to a United States person, beginning the taxable year in which or with which such taxable year of the foreign corporation ends. Taxpayers may choose to apply the rules in proposed § 1.965–7 in their entirety to all tax years as if they were final regulations.

For the avoidance of doubt, proposed § 1.965–9(b) clarifies that the rules described in proposed §§ 1.965–4 apply to all foreign corporation and shareholder taxable years described in proposed § 1.965–9(b), even if the relevant transaction, the effective date of a change in method of accounting or entity classification election, or specified payment occurred in a prior taxable year. This is because the proposed regulations affect only the tax consequences in taxable years described in proposed § 1.965–9(b) and do not affect any prior taxable year.

## Special Analyses

### I. Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and the Memorandum of Agreement (MOA), *Review of Tax Regulations under Executive Order 12866* (April 11, 2018). Accordingly, the proposed rule has been reviewed by the Office of Management and Budget. The Treasury Department requests comment on this designation.

*A. Need for the Proposed Regulations*

These regulations implement section 965 of the Internal Revenue Code as amended by the Act. The proposed regulations provide rules for determining the section 965(a) inclusion amount of a U.S. shareholder of a foreign corporation with deferred foreign income. The proposed regulations directly implement the statutory requirements. The Senate Committee on Finance stated with respect to section 965 that, ''[t]o ensure that all distributions from foreign subsidiaries are treated in the same manner under the participation exemption system, the Committee believes that it is appropriate to tax such earnings as if they had been repatriated under present law, but at a reduced rate. The Committee believes the tax on accumulated foreign earnings should apply without requiring an actual distribution of earnings, and further believes that the tax rate should take into account the liquidity of the accumulated earnings.'' *See* Senate Committee on Finance, Explanation of the Bill, at 358 (November 22, 2017).

*B. Background*

The international tax system prior to the Act created strong incentives for U.S. companies to keep their earnings and profits overseas, an action known as deferral, in order to avoid paying a sizeable residual U.S. tax. The Act ended deferral and the resulting ''lockout effect.'' It introduced a one-time tax on the stock of any deferred earnings and profits not previously taxed by the United States, regardless of whether those earnings are repatriated. Cash or cash-equivalent assets held by a foreign corporation result in a higher rate of repatriation tax than non-cash assets, such as plant, property, and equipment. The tax applies to the accumulated stock of deferred earnings and profits as of the last taxable year of a foreign corporation beginning before January 1, 2018, and with respect to United States shareholders, for taxable years in which or with which the taxable year of the foreign corporation ends; these details are important for understanding the economic impacts of the proposed regulations.

The proposed regulations address open questions regarding the application of section 965. They provide rules related to section 965 described in the three notices issued since December 22, 2017, with certain modifications, as well as additional guidance related to section 965. Specifically, the guidance provides general rules and definitions, as well as rules related to the determination and treatment of section 965(c) deductions, rules that disregard certain transactions in connection with section 965, rules related to foreign tax credits, rules regarding elections and payments, rules regarding the application of the section 965 regulations to affiliated groups, including consolidated groups, rules on dates of applicability, rules relating to section 962 elections, and rules regarding the application of section 986(c) in connection with section 965. These proposed regulations are designed to provide clarity and reduce unnecessary burdens on taxpayers, including by providing guidance on how to apply particular mechanical rules.

*C. Baseline*

The baseline constitutes a world in which no regulations pertaining to section 965 had been promulgated, and thus taxpayers would have made decisions relevant to section 965 in the absence of specific guidance. The following qualitative analysis describes the anticipated impacts of the proposed regulations relative to the baseline.

*D. Consideration of Alternatives*

For a discussion of the alternatives considered in the promulgation of the proposed regulations, see the Explanation of Provisions section of this preamble. For example, see Part II.B of the Explanation of the Provisions section for a discussion of the alternatives considered with respect to the determination of, among other things, post-1986 earnings and profits (E&P), cash measurement dates, and short-term obligations and Part IV.C.2 of the Explanation of Provisions section for a discussion of the alternatives considered to the rule permitting elective basis adjustments to the stock of certain deferred foreign income corporations and E&P deficit foreign corporations.

*E. Anticipated Benefits*

In consultation with taxpayers, the Treasury Department determined that there are multiple instances throughout the statute where the transition tax may be artificially inflated because of double counting of cash and E&P due to multiple testing dates and chains of ownership. Double counting is inequitable because similarly situated taxpayers may differ in terms of the amounts of income that fall into the specific categories that may be subject to double counting. As a result of this analysis, the regulations aim to reduce double counting and produce more equitable tax outcomes across otherwise similarly situated taxpayers by: (1) Preventing double counting in computing the aggregate foreign cash position, for example by disregarding receivables and payables between related specified foreign corporations with a common U.S. shareholder; and (2) preventing double-counting and non-counting in the computation of deferred earnings arising from amounts paid or incurred between related parties between measurement dates.

Inequitable outcomes may also arise in the absence of the proposed regulations due to uncertainty and ambiguity over interpretation of the section 965 requirements. Absent these regulations, different parties would likely interpret the statute in different ways. Such disparate interpretations could lead similarly situated taxpayers to calculate their tax liability differently, an inequitable situation. The proposed regulations aim to reduce uncertainty and ambiguity by: (1) Providing that all members of a consolidated group that are U.S. shareholders of a specified foreign corporation are treated as a single U.S. shareholder; (2) introducing definitions of terminology used; (3) coordinating foreign tax credit rules; (4) making explicit the process for making elections and paying the tax, and (5) providing dates of applicability.

*F. Anticipated Impacts on Administrative and Compliance Costs*

Absent these regulations, different parties would likely interpret the statute in different ways. In addition to the impacts described above, different parties interpreting the statute in different ways implies increased administrative costs for the Internal Revenue Service and increased compliance costs for taxpayers while the inevitable disputes are dealt with through sub-regulatory guidance or resolved through litigation.

For a discussion of the one-time annual reporting burden associated with the statute see the Paperwork Reduction Act (PRA) section of this preamble, which provides further detail regarding the assumptions underlying these estimates. These estimates are that 100,000 respondents will require 5 hours per response for a total reporting burden of 500,000 hours. A valuation of the burden hours at $95/hour leads to a PRA-based estimate of the reporting costs to taxpayers of $47,500,000. This is a one-time paperwork burden associated with a one-time tax, and Treasury anticipates all paperwork burdens to be incurred within the next year. Any subsequent reporting (such as over the eight-year payment period) would be nominal burdens that implement payments calculated in the initial year. This estimate does not disaggregate the cost specifically due to the proposed regulations. The Treasury Department solicits comments on the assumptions and appropriateness of the methodology used to calculate the compliance costs imposed by the proposed regulations relative to the baseline.

**II. Executive Order 13771**

This proposed rule is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

**III. Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply because the regulations do not impose a collection of information on small entities. Any burden on small entities in these regulations stems from the collection of information requirements in proposed §§ 1.965–2(d)(2)(ii)(B), 1.965–2(f)(2)(iii)(B), 1.965–3(b)(2), 1.965–3(c)(3), 1.965–4(b)(2)(i), 1.965–7(b)(2), 1.965–7(b)(3)(iii)(B), 1.965–

7(c)(2), 1.965–7(c)(3)(iv)(B), 1.965–7(c)(3)(v)(D), 1.965–7(c)(6)(i), 1.965–7(d)(3), 1.965–7(e)(2), 1.965–7(f)(5), and 1.965–8(c). It is hereby certified that these collection of information requirements will not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required. This certification is based on several facts. First, the average burden is five hours, which is minimal, particularly in comparison to other regulatory requirements related to owning stock in a specified foreign corporation. Second, the requirements apply only if a taxpayer chooses to make an election or rely on a favorable rule. Third, the collections of information apply to the owners of specified foreign corporations. Because it takes significant resources and investment for a foreign business to be operated in corporate form by a United States person, specified foreign corporations will infrequently be small entities. Moreover, because the collection of information requirements apply to the owners of specified foreign corporations rather than the specified foreign corporations themselves, a specified foreign corporation that was a small entity would not be subject to the collections of information. Fourth, the collection of information requirements in this regulation apply primarily to persons that are United States shareholders of specified foreign corporations. The ownership of sufficient stock in specified foreign corporations in order to constitute a United States shareholder generally entails significant resources and investment, such that businesses that are United States shareholders are generally not small businesses. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal authors of the proposed regulations are Leni C. Perkins and Karen J. Cate of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

* * * * *

Section 1.962–1 also issued under 26 U.S.C. 965(o).

Section 1.965–1 also issued under 26 U.S.C. 965(c)(3)(B)(iii)(V), 965(d)(2), 965(o), 989(c), and 7701(a).

Section 1.965–2 also issued under 26 U.S.C. 965(b)(3)(A)(ii), 965(o) and 961(a) and (b).

Section 1.965–3 also issued under 26 U.S.C. 965(c)(3)(D) and 965(o).

Section 1.965–4 also issued under 26 U.S.C. 965(c)(3)(F) and 965(o).

Sections 1.965–5 through 1.965–6 also issued under 26 U.S.C. 965(o) and 26 U.S.C. 902(c)(7) (as in effect on December 21, 2017).

Section 1.965–7 also issued under 26 U.S.C. 965(h)(3), 965(h)(5), 965(i)(2), 965(i)(8)(B), 965(m)(2)(A), 965(n)(3), and 965(o).

Section 1.965–8 also issued under 26 U.S.C. 965(o).

Section 1.965–9 also issued under 26 U.S.C. 965(o).

* * * * *

Section 1.986(c)–1 also issued under 26 U.S.C. 965(o) and 26 U.S.C. 989(c).

* * * * *

■ **Par. 2.** Section 1.962–1 is amended by:

■ 1. Revising paragraph (b)(1)(i).

■ 2. Redesignating paragraphs (b)(2)(iv)(*a*) and (*b*) as paragraph (b)(2)(iv)(A) and (B), respectively.

■ 3. Adding paragraph (d).

The revision and addition read as follows:

**§ 1.962–1 Limitation of tax for individuals on amounts included in gross income under section 951(a).**

* * * * *

(b) * * *

(1) * * *

(i) *Determination of taxable income.* The term *taxable income* means the excess of—

(A) The sum of—

(*1*) All amounts required to be included in his gross income under section 951(a) for the taxable year with respect to a foreign corporation of which he is a United States shareholder, including—

(*i*) His section 965(a) inclusion amounts (as defined in § 1.965–1(f)(38)); and

(*ii*) His domestic pass-through owner shares (as defined in § 1.965–1(f)(21)) of section 965(a) inclusion amounts with respect to deferred foreign income corporations (as defined in § 1.965–1(f)(17)) of which he is a United States shareholder; plus

(*2*) All amounts which would be required to be included in his gross income under section 78 for the taxable year with respect to the amounts referred to in paragraph (b)(1)(i)(A)(*1*) of this section if the shareholder were a domestic corporation; over

(B) The sum of his section 965(c) deduction amount (as defined in § 1.965–1(f)(42)) and his domestic pass-through owner shares of section 965(c) deduction amounts corresponding to the amounts referred to in paragraph (b)(1)(i)(A)*(1)(ii)* of this section for the taxable year, but not any other deductions or amounts.

* * * * *

(d) *Applicability dates.* Paragraph (b)(1)(i) of this section applies beginning the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to a United States person, for the taxable year in which or with which such taxable year of the foreign corporations ends.

■ **Par. 3.** Section 1.962–2 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

**§ 1.962–2 Election of limitation of tax for individuals.**

(a) *Who may elect.* The election under section 962 may be made only by an individual (including a trust or estate) who is a United States shareholder (including an individual who is a United States shareholder because, by reason of section 958(b), he is considered to own stock of a foreign corporation owned (within the meaning of section 958(a)) by a domestic pass-

through entity (as defined in § 1.965–1(f)(19))).

* * * * *

(d) *Applicability dates.* Paragraph (a) of this section applies beginning the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to a United States person, for the taxable year in which or with which such taxable year of the foreign corporations ends.

■ **Par. 4.** Section 1.965–0 is added to read as follows:

**§ 1.965–0 Outline of section 965 regulations.**

This section lists the headings for §§ 1.965–1 through 1.965–9.

*§ 1.965–1 Overview, general rules, and definitions.*

(a) Overview.
(1) In general.
(2) Scope.
(b) Section 965(a) inclusion amounts.
(1) Inclusion of the pro rata share of the section 965(a) earnings amount.
(2) Reduction by the allocable share of the aggregate foreign E&P deficit.
(c) Section 965(c) deduction amounts.
(d) Treatment of specified foreign corporation as a controlled foreign corporation.
(e) Special rule for certain controlled domestic partnerships.
(1) In general.
(2) Definition of a controlled domestic partnership.
(f) Definitions.
(1) 8 percent rate amount.
(2) 8 percent rate equivalent percentage.
(3) 15.5 percent rate amount.
(4) 15.5 percent rate equivalent percentage.
(5) Accounts payable.
(6) Accounts receivable.
(7) Accumulated post-1986 deferred foreign income.
(8) Aggregate foreign cash position.
(9) Aggregate foreign E&P deficit.
(10) Aggregate section 965(a) inclusion amount.
(11) Allocable share.
(12) Bona fide hedging transaction.
(13) Cash-equivalent asset.
(14) Cash-equivalent asset hedging transaction.
(15) Cash measurement dates.
(16) Cash position.
(i) General rule.
(ii) Fair market value of cash-equivalent assets.
(iii) Measurement of derivative financial instruments.
(iv) Translation of cash position amounts.
(17) Deferred foreign income corporation.
(i) In general.
(ii) Priority rule.
(18) Derivative financial instrument.
(19) Domestic pass-through entity.
(20) Domestic pass-through owner.
(21) Domestic pass-through owner share.
(22) E&P deficit foreign corporation.
(i) In general.
(ii) Determination of deficit in post-1986 earnings and profits.
(23) E&P measurement dates.
(24) Final cash measurement date.
(25) First cash measurement date.
(25) Inclusion year.
(26) Net accounts receivable.
(28) Pass-through entity.
(29) Post-1986 earnings and profits.
(i) General rule.
(ii) Foreign income taxes.
(iii) Deficits in earnings and profits.
(30) Pro rata share.
(31) Second cash measurement date.
(32) Section 958(a) stock.
(33) Section 958(a) U.S. shareholder.
(34) Section 958(a) U.S. shareholder inclusion year.
(35) Section 965 regulations.
(36) Section 965(a) earnings amount.
(37) Section 965(a) inclusion.
(38) Section 965(a) inclusion amount.
(39) Section 965(a) previously taxed earnings and profits.
(40) Section 965(b) previously taxed earnings and profits.
(41) Section 965(c) deduction.
(42) Section 965(c) deduction amount.
(43) Short-term obligation.
(44) Specified E&P deficit.
(45) Specified foreign corporation.
(i) General rule.
(ii) Special attribution rule.
(iii) Passive foreign investment companies.
(46) Spot rate.
(47) United States shareholder.
(g) Examples.

*§ 1.965–2 Adjustments to earnings and profits and basis.*

(a) Scope.
(b) Determination of and adjustments to earnings and profits in the last taxable year of a specified foreign corporation that begins before January 1, 2018, for purposes of applying sections 959 and 965.
(c) Adjustments to earnings and profits by reason of section 965(a).
(d) Adjustments to earnings and profits by reason of section 965(b).
(1) Adjustments to earnings and profits described in section 959(c)(2) and (c)(3) of deferred foreign income corporations.
(2) Adjustments to earnings and profits described in section 959(c)(3) of E&P deficit foreign corporations.
(i) Increase in earnings and profits by an amount equal to the portion of the section 958(a) U.S. shareholder's pro rata share of the specified E&P deficit.
(A) In general.
(B) Reduction of a qualified deficit.
(ii) Determination of portion of a section 958(a) U.S. shareholder's pro rata share of a specified E&P deficit taken into account.
(A) In general.
(B) Designation of portion of a section 958(a) U.S. shareholder's pro rata share of a specified E&P deficit taken into account.
(e) Adjustments to basis by reason of section 965(a).
(1) General rule.
(2) Section 962 election.
(f) Adjustments to basis by reason of section 965(b).
(1) In general.
(2) Election to make adjustments to basis to account for the application of section 965(b).
(i) In general.
(ii) Basis adjustments.
(A) Increase in basis with respect to a deferred foreign income corporation.
(B) Reduction in basis with respect to an E&P deficit foreign corporation.
(C) Section 962 election.
(iii) Rules regarding the election.
(A) Consistency requirement.
(B) Making of making election.
(*1*) Timing.
(*i*) In general.
(*ii*) Transition rule.
(*2*) Election statement.
(g) Gain reduction rule.
(1) Reduction in gain recognized under section 961(b)(2) by reason of distributions attributable to section 965 previously taxed earnings and profits in the inclusion year.
(i) In general.
(ii) Definition of section 965 previously taxed earnings and profits.
(2) Reduction in basis by an amount equal to the gain reduction amount.
(h) Rules of application for specified basis adjustments.
(1) Timing of basis adjustments.
(2) Netting of basis adjustments.
(3) Gain recognition for reduction in excess of basis.
(4) Adjustments with respect to each share.
(i) Section 958(a) stock.
(ii) Applicable property.
(5) Stock or property for which adjustments are made.
(i) In general.
(ii) Special rule for an interest in a foreign pass-through entity.
(i) Definitions.
(1) Applicable property.
(2) Foreign pass-through entity.
(3) Property.
(j) Examples.

*§ 1.965–3 Section 965(c) deductions.*

(a) Scope.
(b) Rules for disregarding certain assets for determining aggregate foreign cash position.
(1) Disregard of certain obligations between related specified foreign corporations.
(2) Disregard of other assets upon demonstration of double-counting.
(3) Examples.
(c) Determination of aggregate foreign cash position for a section 958(a) U.S. shareholder inclusion year.
(1) Single section 958(a) U.S. shareholder inclusion year.
(2) Multiple section 958(a) U.S. shareholder inclusion years.
(i) Allocation to first section 958(a) U.S. shareholder inclusion year.
(ii) Allocation to succeeding section 958(a) U.S. shareholder inclusion years.
(3) Estimation of aggregate foreign cash position.
(4) Examples.
(d) Increase of income by section 965(c) deduction of an expatriated entity.
(1) In general.
(2) Definition of expatriated entity.
(3) Definition of surrogate foreign corporation.
(e) Section 962 election.
(1) In general.
(2) Example.

(f) Treatment of section 965(c) deduction under certain provisions of the Internal Revenue Code.
(1) Section 63(d).
(2) Sections 705, 1367, and 1368.
(i) Adjustments to basis
(ii) S corporation accumulated adjustments account.
(iii) Example.
(3) Section 1411.
(4) Section 4940.
(g) Domestic pass-through entities.

*§ 1.965–4 Disregard of certain transactions.*

(a) Scope.
(b) Transactions undertaken with a principal purpose of changing the amount of a section 965 element.
(1) General rule.
(2) Presumptions and exceptions for the application of the general rule.
(c) Disregard of certain changes in method of accounting and entity classification elections.
(1) Changes in method of accounting.
(2) Entity classification elections.
(d) Definition of a section 965 element.
(e) Rules for applying paragraphs (b) and (c) of this section.
(1) Determination of whether there is a change in the amount of a section 965 element.
(2) Treatment of domestic pass-through owners as United States shareholders.
(f) Disregard of certain transactions occurring between E&P measurement dates.
(1) Disregard of specified payments.
(2) Definition of specified payment.
(3) Definition of tentative E&P measurement date.
(g) Examples.

*§ 1.965–5 Allowance of credit or deduction for foreign income taxes.*

(a) Scope.
(b) Rules for foreign income taxes paid or accrued.
(c) Rules for foreign income taxes treated as paid or accrued.
(1) Disallowed credit.
(i) In general.
(ii) Foreign income taxes deemed paid under section 960(a)(3) (as in effect on December 21, 2017).
(iii) Foreign income taxes deemed paid under section 960(b) (as applicable to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States persons in which or with which such taxable years of foreign corporations end).
(2) Disallowed deduction.
(3) Coordination with section 78.
(i) In general.
(ii) Domestic corporation that is a domestic pass-through owner.
(d) Applicable percentage.
(1) In general.
(2) Applicable percentage for domestic pass-through owners.

*§ 1.965–6 Computation of foreign income taxes deemed paid and allocation and apportionment of deductions.*

(a) Scope.
(b) Computation of foreign incomes taxes deemed paid.
(c) Section 902 fraction.
(1) In general.
(2) Dividend or inclusion in excess of post-1986 undistributed earnings.
(3) Treatment of adjustment under section 965(b)(4)(B).
(d) Allocation and apportionment of deductions.

*§ 1.965–7 Elections and payment rules.*

(a) Scope.
(b) Section 965(h) election.
(1) In general.
(i) Amount of installments.
(ii) Increased installments due to a deficiency or a timely filed or amended return.
(A) In general.
(B) Timing.
(C) Exception for negligence, intentional disregard, or fraud.
(iii) Due date of installments.
(A) In general.
(B) Extension for specified individuals.
(2) Manner of making election.
(i) Eligibility.
(ii) Timing.
(iii) Election statement.
(3) Acceleration of payment.
(i) Acceleration.
(ii) Acceleration events.
(iii) Eligible section 965(h) transferee exception.
(A) In general.
(*1*) Requirement to have a covered acceleration event.
(*2*) Requirement to enter into a transfer agreement.
(B) Transfer agreement.
(*1*) Eligibility.
(*2*) Filing requirements.
(*i*) In general.
(*ii*) Transition rule.
(*3*) Signature requirement.
(*4*) Terms of agreement.
(*5*) Consolidated groups.
(C) Consent of Commissioner.
(*1*) In general.
(*2*) Material misrepresentations and omissions.
(D) Effect of assumption.
(*1*) In general.
(*2*) Eligible section 965(h) transferor liability.
(E) Qualifying consolidated group member transaction.
(*1*) Definition of qualifying consolidated group member transaction.
(*2*) Definition of qualified successor.
(*3*) Departure of multiple members of a consolidated group.
(c) Section 965(i) election.
(1) In general.
(2) Manner of making election.
(i) Eligibility.
(ii) Timing.
(iii) Election statement.
(3) Triggering events.
(i) In general.
(ii) Triggering events.
(iii) Partial transfers.
(iv) Eligible section 965(i) transferee exception.
(A) In general.
(*1*) Requirement to have a covered triggering event.
(*2*) Requirement to enter into a transfer agreement.
(B) Transfer agreement.
(*1*) Eligibility.
(*2*) Filing requirements.
(*i*) In general.
(*ii*) Transition rule.
(*3*) Signature requirement.
(*4*) Terms of agreement.
(C) Consent of Commissioner.
(*1*) In general.
(*2*) Material misrepresentations and omissions.
(D) Effect of assumption.
(*1*) In general.
(*2*) Eligible section 965(i) transferor liability.
(v) Coordination with section 965(h) election.
(A) In general.
(B) Timing for election.
(C) Due date for installment.
(D) Limitation.
(*1*) In general.
(*2*) Manner of obtaining consent.
(*i*) In general.
(*ii*) Transition rule.
(*3*) Signature requirement.
(*4*) Terms of agreement.
(*5*) Consent of Commissioner.
(*i*) In general.
(*ii*) Material misrepresentations and omissions.
(4) Joint and several liability.
(5) Extension of limitation on collection.
(6) Annual reporting requirement.
(i) In general.
(ii) Failure to report.
(d) Section 965(m) election and special rule for real estate investment trusts.
(1) In general.
(2) Inclusion schedule for section 965(m) election.
(3) Manner of making election.
(i) Eligibility.
(ii) Timing.
(iii) Election statement.
(4) Coordination with section 965(h).
(5) Acceleration of inclusion.
(6) Treatment of section 965(a) inclusions of a real estate investment trust.
(e) Section 965(n) election.
(1) In general.
(i) General rule.
(ii) Applicable amount for section 965(n) election.
(iii) Scope of section 965(n) election.
(2) Manner of making election.
(i) Eligibility.
(ii) Timing.
(iii) Election statement.
(f) Election to use alternative method for calculating post-1986 earnings and profits.
(1) Effect of election for specified foreign corporations that do not have a 52–53-week taxable year.
(2) Effect of election for specified foreign corporations that have a 52–53 -week taxable year.
(3) Computation of post-1986 earnings and profits using alternative method.
(4) Definitions.
(i) 52–53-week taxable year.
(ii) Annualized earnings and profits amount.
(iii) Daily earnings amount.
(iv) Notional measurement date.
(5) Manner of making election.

(i) Eligibility.
(ii) Timing.
(iii) Election statement.
(6) Examples.
(g) Definitions.
(1) Deferred net tax liability.
(2) REIT section 965 amounts.
(3) Section 965(h) election.
(4) Section 965(h) net tax liability.
(5) Section 965(i) election.
(6) Section 965(i) net tax liability.
(7) Section 965(m) election.
(8) Section 965(n) election.
(9) Specified individual.
(10) Total net tax liability under section 965.
(i) General rule.
(ii) Net income tax.
(iii) Foreign tax credits.
*§ 1.965–8 Affiliated groups (including consolidated groups).*
(a) Scope.
(b) Reduction of E&P net surplus shareholder's pro rata share of the section 965(a) earnings amount of a deferred foreign income corporation by the allocable share of the applicable share of the aggregate unused E&P deficit.
(1) In general.
(2) Consolidated group as part of an affiliated group.
(c) Designation of portion of excess aggregate foreign E&P deficit taken into account.
(1) In general.
(2) Consolidated group as part of an affiliated group.
(d) Adjustments to earnings and profits and stock basis.
(1) Affiliated groups that are not consolidated groups.
(2) Consolidated groups.
(e) Treatment of a consolidated group as a single section 958(a) U.S. shareholder or a single person.
(1) In general.
(2) Limitation.
(3) Determination of section 965(c) deduction amount.
(f) Definitions.
(1) Aggregate unused E&P deficit.
(i) In general.
(ii) Reduction with respect to E&P net deficit shareholders that are not wholly owned by the affiliated group.
(2) Allocable share.
(3) Applicable share.
(4) Consolidated group aggregate foreign cash position.
(5) E&P net deficit shareholder.
(6) E&P net surplus shareholder.
(7) Excess aggregate foreign E&P deficit.
(8) Group cash ratio.
(9) Group ownership percentage.
(g) Examples.
*§ 1.965–9 Applicability dates.*
(a) In general.
(b) Applicability dates for rules disregarding certain transactions.

■ **Par. 5.** Section 1.965–1 is added to read as follows:

**§ 1.965–1 Overview, general rules, and definitions.**

(a) *Overview*—(1) *In general.* The section 965 regulations provide rules under section 965. This section provides general rules and definitions under section 965. Section 1.965–2 provides rules relating to adjustments to earnings and profits and basis to determine and account for the application of section 965 and a rule that limits the amount of gain recognized under section 961(b)(2) by reason of distributions attributable to section 965 previously taxed earnings and profits (as defined in § 1.965–2(g)(1)(ii)) in the inclusion year. Section 1.965–3 provides rules regarding the determination of section 965(c) deductions. Section 1.965–4 sets forth rules that disregard certain transactions for purposes of section 965. Sections 1.965–5 and 1.965–6 provide rules with respect to foreign tax credits. Section 1.965–7 provides rules regarding elections and payments. Section 1.965–8 provides rules regarding affiliated groups, including consolidated groups. Section 1.965–9 provides dates of applicability. *See also* §§ 1.962–1 and 1.962–2 (providing rules regarding the application of section 962) and 1.986(c)–1 (providing rules regarding the application of section 986(c)).

(2) *Scope.* Paragraph (b) of this section provides the general rules concerning section 965(a) inclusion amounts. Paragraph (c) of this section provides the general rule concerning section 965(c) deduction amounts. Paragraph (d) of this section provides a rule for specified foreign corporations that are not controlled foreign corporations. Paragraph (e) of this section treats certain controlled domestic partnerships as a foreign partnership for purposes of section 965. Paragraph (f) of this section provides definitions applicable for the section 965 regulations and §§ 1.962–1, 1.962–2, and 1.986(c)–1. Paragraph (g) of this section contains examples illustrating the general rules and definitions set forth in this section.

(b) *Section 965(a) inclusion amounts*—(1) *Inclusion of the pro rata share of the section 965(a) earnings amount.* For an inclusion year of a deferred foreign income corporation, the subpart F income of the deferred foreign income corporation (as otherwise determined for the inclusion year under section 952 and § 1.952–1) is increased by the section 965(a) earnings amount of the deferred foreign income corporation. *See* section 965(a). Accordingly, a section 958(a) U.S. shareholder with respect to a deferred foreign income corporation generally includes in gross income under section 951(a)(1) for the section 958(a) U.S. shareholder inclusion year its pro rata share of the section 965(a) earnings amount of the deferred foreign income corporation, translated (if necessary) into U.S. dollars using the spot rate on December 31, 2017, and subject to reduction under section 965(b), paragraph (b)(2) of this section, and § 1.965–8(b). The amount of the section 958(a) U.S. shareholder's inclusion with respect to a deferred foreign income corporation as a result of section 965(a) and this paragraph (b)(1), as reduced under section 965(b), paragraph (b)(2) of this section, and § 1.965–8(b), as applicable, is referred to as the *section 965(a) inclusion amount.* Neither the section 965(a) earnings amount nor the section 965(a) inclusion amount is subject to the rules or limitations in section 952 or limited by the accumulated earnings and profits of the deferred foreign income corporation on the date of the inclusion.

(2) *Reduction by the allocable share of the aggregate foreign E&P deficit.* For purposes of determining a section 958(a) U.S. shareholder's section 965(a) inclusion amount with respect to a deferred foreign income corporation, the U.S. dollar amount of the section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of the deferred foreign income corporation, translated (if necessary) into U.S. dollars using the spot rate on December 31, 2017, is reduced by the deferred foreign income corporation's allocable share of the section 958(a) U.S. shareholder's aggregate foreign E&P deficit. *See* section 965(b). If the section 958(a) U.S. shareholder is a member of a consolidated group, under § 1.965–8(e), all section 958(a) U.S. shareholders that are members of the consolidated group are treated as a single section 958(a) U.S. shareholder for purposes of this paragraph (b)(2).

(c) *Section 965(c) deduction amounts.* For a section 958(a) U.S. shareholder inclusion year, a section 958(a) U.S. shareholder is generally allowed a deduction in an amount equal to the section 965(c) deduction amount.

(d) *Treatment of specified foreign corporation as a controlled foreign corporation.* A specified foreign corporation described in section 965(e)(1)(B) and paragraph (f)(45)(i)(B) of this section that is not otherwise a controlled foreign corporation is treated as a controlled foreign corporation solely for purposes of paragraph (b) of this section and sections 951, 961, and § 1.1411–10. *See* 965(e)(2).

(e) *Special rule for certain controlled domestic partnerships*—(1) *In general.* For purposes of the section 965 regulations, a controlled domestic partnership is treated as a foreign

partnership for purposes of determining the section 958(a) U.S. shareholder of a specified foreign corporation and the section 958(a) stock of the specified foreign corporation owned by the section 958(a) U.S. shareholder if the following conditions are satisfied—

(i) Without regard to this paragraph (e), the controlled domestic partnership is a section 958(a) U.S. shareholder of the specified foreign corporation and thus owns section 958(a) stock of the specified foreign corporation (*tested section 958(a) stock*);

(ii) If the controlled domestic partnership (and all other controlled domestic partnerships in the chain of ownership of the specified foreign corporation) were treated as foreign—

(A) The specified foreign corporation would continue to be a specified foreign corporation; and

(B) At least one United States shareholder of the specified foreign corporation—

(*1*) Would be treated as a section 958(a) U.S. shareholder of the specified foreign corporation; and

(*2*) Would be treated as owning (within the meaning of section 958(a)) tested section 958(a) stock of the specified foreign corporation through another foreign corporation that is a direct or indirect partner in the controlled domestic partnership.

(2) *Definition of a controlled domestic partnership.* For purposes of paragraph (e)(1) of this section, the term *controlled domestic partnership* means, with respect to a United States shareholder described in paragraph (e)(1)(ii)(B) of this section, a domestic partnership that is controlled by the United States shareholder and persons related to the United States shareholder. For purposes of this paragraph (e)(2), control is determined based on all the facts and circumstances, except that a partnership will be deemed to be controlled by a United States shareholder and related persons if those persons, in the aggregate, own (directly or indirectly through one or more partnerships) more than 50 percent of the interests in the partnership capital or profits. For purposes of this paragraph (e)(2), a related person is, with respect to a United States shareholder, a person that is related (within the meaning of section 267(b) or 707(b)(1)) to the United States shareholder.

(f) *Definitions.* This paragraph (f) provides definitions that apply for purposes of the section 965 regulations and §§ 1.962–1, 1.962–2, and 1.986(c)–1. Unless otherwise indicated, all amounts are expressed as positive numbers.

(1) *8 percent rate amount.* The term *8 percent rate amount* means, with respect to a section 958(a) U.S. shareholder and a section 958(a) U.S. shareholder inclusion year, the excess, if any, of the section 958(a) U.S. shareholder's aggregate section 965(a) inclusion amount for the section 958(a) U.S. shareholder inclusion year over the amount of the section 958(a) U.S. shareholder's aggregate foreign cash position for the section 958(a) U.S. shareholder inclusion year as determined under § 1.965–3(c).

(2) *8 percent rate equivalent percentage.* The term *8 percent rate equivalent percentage* means, with respect to a section 958(a) U.S. shareholder and a section 958(a) U.S. shareholder inclusion year, the percentage that would result in the 8 percent rate amount being subject to an 8 percent rate of tax determined by only taking into account a deduction equal to such percentage of such amount and the highest rate of tax specified in section 11 for the section 958(a) U.S. shareholder inclusion year. In the case of a section 958(a) U.S. shareholder inclusion year of a section 958(a) U.S. shareholder to which section 15 applies, the highest rate of tax under section 11 before the effective date of the change in rates and the highest rate of tax under section 11 after the effective date of such change will each be taken into account under the preceding sentence in the same proportions as the portion of the section 958(a) U.S. shareholder inclusion year that is before and after such effective date, respectively.

(3) *15.5 percent rate amount.* The term *15.5 percent rate amount* means, with respect to a section 958(a) U.S. shareholder and a section 958(a) U.S. shareholder inclusion year, the amount of the section 958(a) U.S. shareholder's aggregate foreign cash position for the section 958(a) U.S. shareholder inclusion year as determined under § 1.965–3(c) to the extent it does not exceed the section 958(a) U.S. shareholder's aggregate section 965(a) inclusion amount for the section 958(a) U.S. shareholder inclusion year.

(4) *15.5 percent rate equivalent percentage.* The term *15.5 percent rate equivalent percentage,* with respect to a section 958(a) U.S. shareholder and a section 958(a) U.S. shareholder inclusion year, has the meaning provided for the term ''8 percent rate equivalent percentage'' applied by substituting ''15.5 percent rate amount'' for ''8 percent rate amount'' and ''15.5 percent rate of tax'' for ''8 percent rate of tax.''

(5) *Accounts payable.* The term *accounts payable* means payables arising from the purchase of property described in section 1221(a)(1) or section 1221(a)(8) or the receipt of services from vendors or suppliers, provided the payables have a term upon issuance of less than one year.

(6) *Accounts receivable.* The term *accounts receivable* means receivables described in section 1221(a)(4) that have a term upon issuance of less than one year.

(7) *Accumulated post-1986 deferred foreign income*—(i) *In general.* The term *accumulated post-1986 deferred foreign income* means, with respect to a specified foreign corporation, the post-1986 earnings and profits of the specified foreign corporation except to the extent such earnings and profits—

(A) Are attributable to income of the specified foreign corporation that is effectively connected with the conduct of a trade or business within the United States and subject to tax under chapter 1;

(B) If distributed, would, in the case of a controlled foreign corporation, be excluded from the gross income of a United States shareholder under section 959; or

(C) If distributed, would, in the case of a controlled foreign corporation that has shareholders that are not United States shareholders on an E&P measurement date, be excluded from the gross income of such shareholders under section 959 if such shareholders were United States shareholders, determined by applying the principles of Revenue Ruling 82–16, 1982–1 C.B. 106.

(ii) *Earnings and profits attributable to subpart F income in the same taxable year as an E&P measurement date.* For purposes of determining the accumulated post-1986 deferred foreign income of a specified foreign corporation as of an E&P measurement date, earnings and profits of the specified foreign corporation that are or would be, applying the principles of Revenue Ruling 82–16, 1982–1 C.B. 106, described in section 959(c)(2) by reason of subpart F income (as defined in section 952 without regard to section 965(a)) are described in section 965(d)(2)(B) and paragraph (f)(7)(i)(B) or (f)(7)(i)(C) of this section only to the extent that such income has been accrued by the specified foreign corporation as of the E&P measurement date. For rules regarding the interaction of sections 951, 956, 959, and 965 generally, see § 1.965–2(b).

(8) *Aggregate foreign cash position*—(i) *In general.* The term *aggregate foreign cash position* means, with respect to a section 958(a) U.S. shareholder that is

not a member of a consolidated group, the greater of—

(A) The aggregate of the section 958(a) U.S. shareholder's pro rata share of the cash position of each specified foreign corporation determined as of the final cash measurement date of the specified foreign corporation.

(B) One half of the sum of—

(*1*) The aggregate described in paragraph (f)(8)(i)(A) of this section determined as of the second cash measurement date of each specified foreign corporation, plus

(*2*) The aggregate described in paragraph (f)(8)(i)(A) of this section determined as of the first cash measurement date of each specified foreign corporation.

(ii) *Other rules.* For rules for determining the aggregate foreign cash position for a section 958(a) U.S. shareholder inclusion year of the section 958(a) U.S. shareholder, see § 1.965–3(c). For the rule for determining the aggregate foreign cash position of a section 958(a) U.S. shareholder that is a member of a consolidated group, see § 1.965–8(e)(3). For rules disregarding certain assets for purposes of determining the aggregate foreign cash position of a section 958(a) U.S. shareholder, see § 1.965–3(b).

(9) *Aggregate foreign E&P deficit.* The term *aggregate foreign E&P deficit* means, with respect to a section 958(a) U.S. shareholder, the lesser of—

(i) The aggregate of the section 958(a) U.S. shareholder's pro rata share of the specified E&P deficit of each E&P deficit foreign corporation, translated (if necessary) into U.S. dollars using the spot rate on December 31, 2017, or

(ii) The aggregate of the section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of each deferred foreign income corporation, translated (if necessary) into U.S. dollars using the spot rate on December 31, 2017.

(10) *Aggregate section 965(a) inclusion amount.* The term *aggregate section 965(a) inclusion amount* means, with respect to a section 958(a) U.S. shareholder, the sum of all of the section 958(a) U.S. shareholder's section 965(a) inclusion amounts.

(11) *Allocable share.* The term *allocable share* means, with respect to a deferred foreign income corporation and an aggregate foreign E&P deficit of a section 958(a) U.S. shareholder, the product of the aggregate foreign E&P deficit and the ratio determined by dividing—

(i) The section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of the deferred foreign income corporation, translated (if necessary) into U.S. dollars using the spot rate on December 31, 2017, by

(ii) The amount described in paragraph (f)(9)(ii) of this section with respect to the section 958(a) U.S. shareholder.

(12) *Bona fide hedging transaction.* The term *bona fide hedging transaction* means a hedging transaction that meets (or that would meet if the specified foreign corporation were a controlled foreign corporation) the requirements of a bona fide hedging transaction described in § 1.954–2(a)(4)(ii), except that in the case of a specified foreign corporation that is not a controlled foreign corporation, the identification requirements of § 1.954–2(a)(4)(ii)(B) do not apply.

(13) *Cash-equivalent asset.* The term *cash-equivalent asset* means any of the following assets—

(i) Personal property which is of a type that is actively traded and for which there is an established financial market;

(ii) Commercial paper, certificates of deposit, the securities of the Federal government and of any State or foreign government;

(iii) Any foreign currency;

(iv) A short-term obligation; or

(v) Derivative financial instruments, other than bona fide hedging transactions.

(14) *Cash-equivalent asset hedging transaction.* The term *cash-equivalent asset hedging transaction* means a bona fide hedging transaction identified on a specified foreign corporation's books and records as hedging a cash-equivalent asset.

(15) *Cash measurement dates.* The term *cash measurement dates* means, with respect to a specified foreign corporation, the first cash measurement date, the second cash measurement date, and the final cash measurement date, collectively, and each a *cash measurement date.*

(16) *Cash position*—(i) *General rule.* The term *cash position* means, with respect to a specified foreign corporation, the sum of—

(A) Cash held by the corporation;

(B) The net accounts receivable of the corporation; and

(C) The fair market value of the cash-equivalent assets held by the corporation.

(ii) *Fair market value of cash-equivalent assets.* For purposes of determining the fair market value of a cash-equivalent asset of a specified foreign corporation, the value of the cash-equivalent asset must be adjusted by the fair market value of any cash-equivalent asset hedging transaction with respect to the cash-equivalent asset, but only to the extent that the cash-equivalent asset hedging transaction does not reduce the fair market value of the cash-equivalent asset below zero.

(iii) *Measurement of derivative financial instruments.* The amount of derivative financial instruments taken into account in determining the cash position of a specified foreign corporation is the aggregate fair market value of its derivative financial instruments that constitute cash-equivalent assets, provided such amount is not less than zero.

(iv) *Translation of cash position amounts.* The cash position of a specified foreign corporation with respect to a cash measurement date must be expressed in U.S. dollars. For this purpose, the amounts described in paragraph (f)(16)(i) must be translated (if necessary) into U.S. dollars using the spot rate on the relevant cash measurement date.

(17) *Deferred foreign income corporation*—(i) *In general.* The term *deferred foreign income corporation* means a specified foreign corporation that has accumulated post-1986 deferred foreign income greater than zero as of an E&P measurement date.

(ii) *Priority rule.* If a specified foreign corporation satisfies the definition of a deferred foreign income corporation under section 965(d)(1) and paragraph (f)(17)(i) of this section, it is classified solely as a deferred foreign income corporation and not also as an E&P deficit foreign corporation even if it otherwise satisfies the requirements of section 965(b)(3)(B) and paragraph (f)(22) of this section.

(18) *Derivative financial instrument.* The term *derivative financial instrument* includes a financial instrument that is one of the following—

(i) A notional principal contract,

(ii) An option contract,

(iii) A forward contract,

(iv) A futures contract,

(v) A short position in securities or commodities, or

(vi) Any financial instrument similar to one described in paragraphs (f)(18)(i) through (v) of this section.

(19) *Domestic pass-through entity.* The term *domestic pass-through entity* means a pass-through entity that is a United States person (as defined in section 7701(a)(30)).

(20) *Domestic pass-through owner.* The term *domestic pass-through owner* means, with respect to a domestic pass-through entity, a United States person (as defined in section 7701(a)(30)) that is a partner, shareholder, beneficiary, grantor, or owner, as the case may be,

in the domestic pass-through entity. Notwithstanding the preceding sentence, the term does not include a partner, shareholder, beneficiary, grantor, or owner of the domestic pass-through entity that is itself a domestic pass-through entity but does include any other United States person that is an indirect partner, shareholder, beneficiary, grantor, or owner of the domestic pass-through entity through one or more other pass-through entities.

(21) *Domestic pass-through owner share.* The term *domestic pass-through owner share* means, with respect to a domestic pass-through owner and a domestic pass-through entity, the domestic pass-through owner's share of the aggregate section 965(a) inclusion amount and the section 965(c) deduction amount, as applicable, of the domestic pass-through entity, including the domestic pass-through owner's share of the aggregate section 965(a) inclusion amount and section 965(c) deduction amount, as applicable, of a domestic pass-through entity owned indirectly by the domestic pass-through owner through one or more other pass-through entities.

(22) *E&P deficit foreign corporation*—(i) *In general.* The term *E&P deficit foreign corporation* means, with respect to a section 958(a) U.S. shareholder, a specified foreign corporation, other than a deferred foreign income corporation, if, as of November 2, 2017—

(A) The specified foreign corporation had a deficit in post-1986 earnings and profits,

(B) The corporation was a specified foreign corporation, and

(C) The shareholder was a United States shareholder of the corporation.

(ii) *Determination of deficit in post-1986 earnings and profits.* In the case of a specified foreign corporation that has post-1986 earnings and profits that include earnings and profits described in section 959(c)(1) or 959(c)(2) (or both) and a deficit in earnings and profits (including hovering deficits, as defined in § 1.367(b)–7(d)(2)(i)), the specified foreign corporation has a deficit in post-1986 earnings and profits described in paragraph (f)(22)(i)(A) of this section only to the extent the deficit in post-1986 earnings and profits exceeds the aggregate of its post-1986 earnings and profits described in section 959(c)(1) and 959(c)(2).

(23) *E&P measurement dates.* The term *E&P measurement dates* means November 2, 2017, and December 31, 2017, collectively, and each an *E&P measurement date.*

(24) *Final cash measurement date.* The term *final cash measurement date* means, with respect to a specified foreign corporation, the close of the last taxable year of the specified foreign corporation that begins before January 1, 2018, and ends on or after November 2, 2017, if any.

(25) *First cash measurement date.* The term *first cash measurement date* means, with respect to a specified foreign corporation, the close of the last taxable year of the specified foreign corporation that ends after November 1, 2015, and before November 2, 2016, if any.

(26) *Inclusion year.* The term *inclusion year* means, with respect to a deferred foreign income corporation, the last taxable year of the deferred foreign income corporation that begins before January 1, 2018.

(27) *Net accounts receivable.* The term *net accounts receivable* means, with respect to a specified foreign corporation, the excess (if any) of—

(i) The corporation's accounts receivable, over

(ii) The corporation's accounts payable (determined consistent with the rules of section 461).

(28) *Pass-through entity.* The term *pass-through entity* means a partnership, S corporation, or any other person (whether domestic or foreign) other than a corporation to the extent that the income or deductions of the person are included in the income of one or more direct or indirect owners or beneficiaries of the person. For example, if a domestic trust is subject to federal income tax on a portion of its section 965(a) inclusion amount and its domestic pass-through owners are subject to tax on the remaining portion, the domestic trust is treated as a domestic pass-through entity with respect to such remaining portion.

(29) *Post-1986 earnings and profits*—(i) *General rule.* The term *post-1986 earnings and profits* means, with respect to a specified foreign corporation and an E&P measurement date, the earnings and profits (including earnings and profits described in section 959(c)(1) and 959(c)(2)) of the specified foreign corporation (computed in accordance with sections 964(a) and 986, subject to § 1.965–4(f), and by taking into account only periods when the foreign corporation was a specified foreign corporation) accumulated in taxable years beginning after December 31, 1986, and determined—

(A) As of the E&P measurement date, except as provided in paragraph (f)(29)(ii) of this section, and

(B) Without diminution by reason of dividends distributed during the last taxable year of the foreign corporation that begins before January 1, 2018, other than dividends distributed to another specified foreign corporation to the extent the dividends increase the post-1986 earnings and profits of the distributee specified foreign corporation.

(ii) *Foreign income taxes.* For purposes of determining a specified foreign corporation's post-1986 earnings and profits as of the E&P measurement date on November 2, 2017, in the case in which foreign income taxes (as defined in section 901(m)(5)) of the specified foreign corporation accrue after November 2, 2017, but on or before December 31, 2017, and during the specified foreign corporation's U.S. taxable year that includes November 2, 2017, the specified foreign corporation's post-1986 earnings and profits as of November 2, 2017, are reduced by the applicable portion of such foreign income taxes. For purposes of the preceding sentence, the applicable portion of the foreign income taxes is the amount of the taxes that are attributable to the portion of the taxable income (as determined under foreign law) that accrues on or before November 2, 2017.

(iii) *Deficits in earnings and profits.* Any deficit related to post-1986 earnings and profits, including a hovering deficit (as defined in § 1.367(b)–7(d)(2)(i)), of a specified foreign corporation is taken into account for purposes of determining the post-1986 earnings and profits (including a deficit) of the specified foreign corporation.

(30) *Pro rata share.* The term *pro rata share* means, with respect to a section 958(a) U.S. shareholder of a specified foreign corporation, a deferred foreign income corporation, or an E&P deficit foreign corporation, as applicable—

(i) With respect to the section 965(a) earnings amount of a deferred foreign income corporation, the portion of the section 965(a) earnings amount that would be treated as distributed to the section 958(a) U.S. shareholder under section 951(a)(2)(A) and § 1.951–1(e), determined as of the last day of the inclusion year of the deferred foreign income corporation;

(ii) With respect to the specified E&P deficit of an E&P deficit foreign corporation, the portion of the specified E&P deficit allocated to the section 958(a) U.S. shareholder by allocating the specified E&P deficit among the shareholders of the corporation's common stock and in proportion to the value of the common stock held by the shareholders, determined as of the last day of the last taxable year of the E&P deficit foreign corporation that begins before January 1, 2018; and

(iii) With respect to the cash position of a specified foreign corporation on a cash measurement date, the portion of the cash position that would be treated as distributed to the section 958(a) U.S. shareholder under section 951(a)(2)(A) and § 1.951–1(e) if the cash position were subpart F income, determined as of the close of the cash measurement date and without regard to whether the section 958(a) U.S. shareholder is a section 958(a) U.S. shareholder of the specified foreign corporation as of any other cash measurement date of the specified foreign corporation, including the final cash measurement date of the specified foreign corporation.

(31) *Second cash measurement date.* The term *second cash measurement date* means, with respect to a specified foreign corporation, the close of the last taxable year of the specified foreign corporation that ends after November 1, 2016, and before November 2, 2017, if any.

(32) *Section 958(a) stock.* The term *section 958(a) stock* means, with respect to a specified foreign corporation, a deferred foreign income corporation, or an E&P deficit foreign corporation, as applicable, stock of the corporation owned (directly or indirectly) by a United States shareholder within the meaning of section 958(a).

(33) *Section 958(a) U.S. shareholder.* The term *section 958(a) U.S. shareholder* means, with respect to a specified foreign corporation, a deferred foreign income corporation, or an E&P deficit foreign corporation, as applicable, a United States shareholder of such corporation that owns section 958(a) stock of the corporation.

(34) *Section 958(a) U.S. shareholder inclusion year.* The term *section 958(a) U.S. shareholder inclusion year* means the taxable year of a section 958(a) U.S. shareholder in which or with which the inclusion year of a deferred foreign income corporation ends.

(35) *Section 965 regulations.* The term *section 965 regulations* means the regulations under §§ 1.965–1 through 1.965–9, collectively.

(36) *Section 965(a) earnings amount.* The term *section 965(a) earnings amount* means, with respect to a deferred foreign income corporation, the greater of the accumulated post-1986 deferred foreign income of the deferred foreign income corporation as of the E&P measurement date on November 2, 2017, or the accumulated post-1986 deferred foreign income of the deferred foreign income corporation as of the E&P measurement date on December 31, 2017, determined in each case in the functional currency of the specified foreign corporation. If the functional currency of a specified foreign corporation changes between the two E&P measurement dates, the comparison must be made in the functional currency of the specified foreign corporation as of December 31, 2017, by translating the specified foreign corporation's accumulated post-1986 deferred foreign income as of November 2, 2017, into the new functional currency using the spot rate on November 2, 2017.

(37) *Section 965(a) inclusion.* The term *section 965(a) inclusion* means, with respect to a person and a deferred foreign income corporation, an amount included in income by the person by reason of section 965 with respect to the deferred foreign income corporation, whether because the person is a section 958(a) U.S. shareholder of the deferred foreign income corporation with a section 965(a) inclusion amount with respect to the deferred foreign income corporation or because the person is a domestic pass-through owner with respect to a domestic pass-through entity that is a section 958(a) U.S. shareholder of the deferred foreign income corporation and the person includes in income its domestic pass-through owner share of the section 965(a) inclusion amount of the domestic pass-through entity with respect to the deferred foreign income corporation.

(38) *Section 965(a) inclusion amount.* The term *section 965(a) inclusion amount* has the meaning provided in paragraph (b)(1) of this section.

(39) *Section 965(a) previously taxed earnings and profits.* The term *section 965(a) previously taxed earnings and profits* has the meaning provided in § 1.965–2(c).

(40) *Section 965(b) previously taxed earnings and profits.* The term *section 965(b) previously taxed earnings and profits* has the meaning provided in § 1.965–2(d).

(41) *Section 965(c) deduction.* The term *section 965(c) deduction* means, with respect to a person, an amount allowed as a deduction to the person by reason of section 965(c), whether because the person is a section 958(a) U.S. shareholder with a section 965(c) deduction amount or because the person is a domestic pass-through owner with respect to a domestic pass-through entity that is a section 958(a) U.S. shareholder and the person takes into account its domestic pass-through owner share of the section 965(c) deduction amount of the domestic pass-through entity.

(42) *Section 965(c) deduction amount.* The term *section 965(c) deduction amount* means an amount equal to the sum of—

(i) A section 958(a) U.S. shareholder's 8 percent rate equivalent percentage of the section 958(a) U.S. shareholder's 8 percent rate amount for the section 958(a) U.S. shareholder inclusion year, plus

(ii) The section 958(a) U.S. shareholder's 15.5 percent rate equivalent percentage of the section 958(a) U.S. shareholder's 15.5 percent rate amount for the section 958(a) U.S. shareholder inclusion year.

(43) *Short-term obligation.* The term *short-term obligation* means any obligation with a term upon issuance that is less than one year and any loan that must be repaid at the demand of the lender (or that must be repaid within one year of such demand), but does not include any accounts receivable.

(44) *Specified E&P deficit.* The term *specified E&P deficit* means, with respect to an E&P deficit foreign corporation, the amount of the deficit described in paragraph (f)(22)(i)(A) of this section.

(45) *Specified foreign corporation*—(i) *General rule.* Except as provided in paragraph (f)(45)(iii) of this section, the term *specified foreign corporation* means—

(A) A controlled foreign corporation, or

(B) A foreign corporation of which one or more domestic corporations is a United States shareholder.

(ii) *Special attribution rule.* Solely for purposes of determining whether a foreign corporation is a specified foreign corporation within the meaning of section 965(e)(1)(B) and paragraph (f)(45)(i)(B) of this section, stock owned, directly or indirectly, by or for a partner (*tested partner*) will not be considered as being owned by a partnership under sections 958(b) and 318(a)(3)(A) and § 1.958–2(d)(1)(i) if the tested partner owns less than five percent of the interests in the partnership's capital and profits. For purposes of the preceding sentence, an interest in the partnership owned by another partner will be considered as being owned by the tested partner under the principles of sections 958(b) and 318, as modified by this paragraph (f)(45)(ii), as if the interest in the partnership were stock.

(iii) *Passive foreign investment companies.* A foreign corporation that is a passive foreign investment company (as defined in section 1297) with respect to a United States shareholder and that is not a controlled foreign corporation is not a specified foreign corporation with respect to the United States shareholder.

(46) *Spot rate.* The term *spot rate* has the meaning provided in § 1.988–1(d).

(47) *United States shareholder.* The term *United States shareholder* has the meaning provided in section 951(b).

(g) *Examples.* The following examples illustrate the definitions and general rules set forth in this section.

*Example 1. Definition of specified foreign corporation.* (i) *Facts.* A, an individual, owns 100% of the stock of a domestic corporation, DC, and 1% of the interests in a partnership, PS. A United States citizen, USI, owns 10% of the interests in PS and 10% by vote and value of the stock of a foreign corporation, FC. The remaining 90% by vote and value of the stock of FC is owned by non-United States persons that are unrelated to A, USI, DC, and PS.

(ii) *Analysis.* (A) Absent the application of sections 958(b), 318(a)(3)(A), and 318(a)(3)(C), and § 1.958–2(d)(1)(i) and (iii), FC would not be a specified foreign corporation, because FC is not a controlled foreign corporation and there would be no domestic corporation that is a United States shareholder of FC. However, under sections 958(b) and 318(a)(3)(A) and § 1.958–2(d)(1)(i), absent the special attribution rule in paragraph (f)(45)(ii) of this section, PS would be treated as owning 100% of the stock of DC and 10% of the stock of FC. As a result, under sections 958(b), 318(a)(5)(A), and 318(a)(3)(C), and § 1.958–2(f)(1)(i) and (d)(1)(iii), DC would be treated as owning the stock of FC treated as owned by PS, and thus DC would be a United States shareholder with respect to FC, causing FC to be a specified foreign corporation within the meaning of section 965(e)(1)(B) and paragraph (f)(45)(i)(B) of this section. The results would the same whether A or PS or both are domestic or foreign persons.

(B) Under the special attribution rule in paragraph (f)(45)(ii) of this section, solely for purposes of determining whether a foreign corporation is a specified foreign corporation within the meaning of section 965(e)(1)(B) and paragraph (f)(45)(i)(B) of this section, the stock of DC owned by A is not considered as being owned by PS under sections 958(b) and 318(a)(3)(A) and § 1.958–2(d)(1)(i), because A owns less than 5% of the interests in PS's capital and profits. Accordingly, FC is not a specified foreign corporation within the meaning of section 965(e)(1)(B) and paragraph (f)(45)(i)(B) of this section.

*Example 2. Definition of specified foreign corporation.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 1* of this paragraph (g), except that A is a corporation wholly owned by B, and B directly owns 4% of the interests in PS.

(ii) *Analysis.* Applying the principles of sections 958(b) and 318, as modified by paragraph (f)(45)(ii) of this section, as if the interest in PS were stock, A is treated as owning the interests in PS owned by B (in addition to the 1% interest in PS that A owns directly), and thus A is not treated as owning less than 5% of the interests in PS's capital and profits. Accordingly, the special attribution rule in paragraph (f)(45)(ii) of this section does not apply, and PS is treated as owning A's stock of DC for purposes of determining whether FC is a specified foreign corporation within the meaning of section 965(e)(1)(B) and paragraph (f)(45)(i)(B) of this section. Accordingly, under the analysis described in paragraph (ii)(A) of *Example 1* of this paragraph (g), FC is a specified foreign corporation within the meaning of section 965(e)(1)(B) and paragraph (f)(45)(i)(B) of this section.

*Example 3. Determination of accumulated post-1986 deferred foreign income.* (i) *Facts.* USP, a domestic corporation, and FP, a foreign corporation unrelated to USP, have owned 70% and 30% respectively, by vote and value, of the only class of stock of FS, a foreign corporation, from January 1, 2016, until December 31, 2017. USP and FS both have a calendar year taxable year. FS had no income until its taxable year ending December 31, 2016, in which it had 100u of income, all of which constituted subpart F income, and USP included 70u in income with respect to FS under section 951(a)(1) for such year. FS earned no income in 2017. Therefore, FS's post-1986 earnings and profits are 100u as of both E&P measurement dates.

(ii) *Analysis.* Because USP included 70u in income with respect to FS under section 951(a)(1), 70u of such post-1986 earnings and profits would, if distributed, be excluded from the gross income of USP under section 959. Thus, FS's accumulated post-1986 deferred foreign income would be reduced by 70u pursuant to section 965(d)(2)(B) and paragraph (f)(7)(i)(B) of this section. Furthermore, under paragraph (f)(7)(i)(C) of this section, the accumulated post-1986 deferred foreign income of FS is reduced by amounts that would be excluded from the gross income of FP if FP were a United States shareholder, consistent with the principles of Revenue Ruling 82–16. Accordingly, FS's accumulated post-1986 deferred foreign income is reduced by the remaining 30u of the 100u of post-1986 earnings and profits to which USP's 70u of section 951(a)(1) income inclusions were attributable. As a result, FS's accumulated post-1986 deferred foreign income is 0u (100u minus 70u minus 30u).

*Example 4. Determination of status as a deferred foreign income corporation or an E&P deficit foreign corporation; specified foreign corporation is solely a deferred foreign income corporation.* (i) *Facts.* USP, a domestic corporation, owns all of the stock of FS, a foreign corporation. As of November 2, 2017, FS has a deficit in post-1986 earnings and profits of 150u. As of December 31, 2017, FS has 200u of post-1986 earnings and profits. FS does not have earnings and profits that are attributable to income of the specified foreign corporation that is effectively connected with the conduct of a trade or business within the United States and subject to tax under chapter 1, or that, if distributed, would be excluded from the gross income of a United States shareholder under section 959 or from the gross income of another shareholder if such shareholder were a United States shareholder.

(ii) *Analysis.* FS's accumulated post-1986 deferred foreign income is equal to its post-1986 earnings and profits because no adjustment to post-1986 earnings and profits is made under section 965(d)(2) or § 1.965–1(f)(7). Under paragraph (f)(17)(i) of this section, FS is a deferred foreign income corporation because FS has accumulated post-1986 deferred foreign income greater than zero as of the E&P measurement date on December 31, 2017. In addition, under paragraph (f)(17)(ii) of this section, because FS is a deferred foreign income corporation, FS is not also an E&P deficit foreign corporation, notwithstanding that FS has a deficit in post-1986 earnings and profits as of the E&P measurement date on November 2, 2017.

*Example 5. Determination of status as a deferred foreign income corporation or an E&P deficit foreign corporation; specified foreign corporation is neither a deferred foreign income corporation nor an E&P deficit foreign corporation.* (i) *Facts.* USP, a domestic corporation, owns all of the stock of FS, a foreign corporation. As of both November 2, 2017, and December 31, 2017, FS has 100u of earnings and profits described in section 959(c)(2) and a deficit of 90u in earnings and profits described in section 959(c)(3), all of which were accumulated in taxable years beginning after December 31, 1986, while FS was a specified foreign corporation. Accordingly, as of both November 2, 2017, and December 31, 2017, FS has 10u of post-1986 earnings and profits.

(ii) *Analysis.* (A) *Determination of status as a deferred foreign income corporation.* Under paragraph (f)(17) of this section, for purposes of determining whether FS is a deferred foreign income corporation, a determination must be made whether FS has accumulated post-1986 deferred foreign income greater than zero as of either the E&P measurement date on November 2, 2017, or the E&P measurement date on December 31, 2017. Under section 965(d)(2) and paragraph (f)(7) of this section, FS's accumulated post-1986 deferred foreign income is its post-1986 earnings and profits, except to the extent such earnings and profits are attributable to income of the specified foreign corporation that is effectively connected with the conduct of a trade or business within the United States and subject to tax under chapter 1, or that, if distributed, would be excluded from the gross income of a United States shareholder under section 959 or from the gross income of another shareholder if such shareholder were a United States shareholder. Disregarding FS's 100u of post-1986 earnings and profits described in paragraph (f)(7)(i)(B) of this section, FS has a 90u deficit in accumulated post-1986 deferred foreign income as of both E&P measurement dates. Accordingly, FS does not have accumulated post-1986 deferred foreign income greater than zero as of either E&P measurement date and therefore FS is not a deferred foreign income corporation.

(B) *Determination of status as an E&P deficit foreign corporation.* Under paragraph (f)(22)(i) of this section, for purposes of determining whether FS is an E&P deficit foreign corporation, a determination must be made whether FS has a deficit in post-1986 earnings and profits as of the E&P measurement date on November 2, 2017. Under paragraph (f)(22)(ii) of this section, because the deficit in the earnings and profits of FS described in section 959(c)(3) of 90u does not exceed the earnings and profits of FS described in section 959(c)(2) of 100u, FS

does not have a deficit in post-1986 earnings and profits as of the E&P measurement date on November 2, 2017, and therefore FS is not an E&P deficit foreign corporation. Accordingly, FS is neither a deferred foreign income corporation nor an E&P deficit foreign corporation.

*Example 6. Application of currency translation rules.* (i) *Facts.* As of November 2, 2017, and December 31, 2017, USP, a domestic corporation, owns all of the stock of CFC1, an E&P deficit foreign corporation with the ''u'' as its functional currency; CFC2, an E&P deficit foreign corporation with the ''v'' as its functional currency; CFC3, a deferred foreign income corporation with the ''y'' as its functional currency; and CFC4, a deferred foreign income corporation with the ''z'' as its functional currency. USP, CFC1, CFC2, CFC3, and CFC4 each have a calendar year taxable year. As of December 31, 2017, 1u = $1, .75v = $1, .50y = $1, and .25z = $1. CFC1 has a specified E&P deficit of 100u, CFC2 has a specified E&P deficit of 120v, CFC3 has a section 965(a) earnings amount of 50y, and CFC4 has a section 965(a) earnings amount of 75z.

(ii) *Analysis.* (A) Under paragraph (f)(38) of this section, for purposes of determining USP's section 965(a) inclusion amounts with respect to CFC3 and CFC4, the section 965(a) earnings amount of each of CFC3 and CFC4 is translated into U.S. dollars at the spot rate on December 31, 2017, which equals $100 (50y at .50y = $1) and $300 (75z at .25z = $1), respectively. Furthermore, USP's pro rata share of the section 965(a) earnings amounts, as translated, is $100 and $300, respectively, or 100% of each section 965(a) earnings amount.

(B) Under paragraph (f)(9) of this section, for purposes of determining USP's aggregate foreign E&P deficit, the specified E&P deficit of each of CFC1 and CFC2 is translated into U.S. dollars at the spot rate on December 31, 2017, which equals $100 (100u at 1u = $1) and $160 (120v at .75v = $1), respectively. Furthermore USP's pro rata share of each specified E&P deficit, as translated, is $100 and $160, respectively, or 100% of each specified E&P deficit. Therefore, USP's aggregate foreign E&P deficit is $260.

(C) Under section 965(b)(1) and paragraph (b)(2) of this section, for purposes of determining USP's section 965(a) inclusion amount with respect to each of CFC3 and CFC4, the U.S. dollar amount of USP's pro rata share of the section 965(a) earnings amount of each of CFC3 and CFC4 is reduced by each of CFC3 and CFC4's allocable share of USP's aggregate foreign E&P deficit. Under section 965(b)(2) and paragraph (f)(11) of this section, CFC3's allocable share of USP's aggregate foreign E&P deficit of $260 is $65 ($260 × ($100/$400)) and CFC4's allocable share of USP's aggregate foreign E&P deficit is $195 ($260 × ($300/400)). After reduction under section 965(b)(1) and paragraph (b)(2) of this section, the section 965(a) inclusion amount of USP with respect to CFC3 is $35 ($100 − $65) and the section 965(a) inclusion amount of USP with respect to CFC4 is $105 ($300 − $195). Under § 1.965–2(c), the section 965(a) previously taxed earnings and profits of each of CFC3 and CFC4, translated into the respective functional currencies of CFC3 and CFC4 at the spot rate on December 31, 2017, are 17.5y ($35 at .50y = $1) and 26.25z ($105 at .25z = $1), respectively. Under § 1.965–6(b), for purposes of applying section 960(a)(1), the amounts treated as a dividend paid by each of CFC3 and CFC4, translated into the respective functional currencies of CFC3 and CFC4 at the spot rate on December 31, 2017, are 17.5y ($35 at .50y = $1) and 26.25z ($105 at .25z = $1).

(D) For purposes of determining the section 965(b) previously taxed earnings and profits of each of CFC3 and CFC4 under section 965(b)(4)(A) and § 1.965–2(d)(1) as a result of the reduction to USP's section 965(a) inclusion amounts with respect to CFC3 and CFC4, the amount of the aggregate foreign E&P deficit of USP allocated to each of CFC3 and CFC4 under section 965(b)(2) and paragraph (f)(11) of this section, translated into the respective functional currencies of CFC3 and CFC4 at the spot rate on December 31, 2017, is 32.5y ($65 at .50y = $1) and 48.75z ($195 at .25z = $1), respectively.

*Example 7. Determination of cash measurement dates and pro rata shares of cash positions.* (i) *Facts.* Except as otherwise provided, for all relevant periods, USP, a domestic corporation, has owned directly at least 10% of the stock of CFC1, CFC2, CFC3, and CFC4, each a foreign corporation. CFC1 and CFC2 have calendar year taxable years. CFC3 and CFC4 have taxable years that end on November 30. No entity has a short taxable year, except as a result of the transactions described below.

(A) USP transferred all of its stock of CFC2 to an unrelated person on June 30, 2016, at which point USP ceased to be a United States shareholder with respect to CFC2.

(B) CFC4 dissolved on December 30, 2010, and, as a result, its final taxable year ended on December 30, 2010.

(ii) *Analysis.* Each of CFC1, CFC2, CFC3, and CFC4 is a specified foreign corporation with respect to USP, subject to the sale of CFC2 on June 30, 2016, and the dissolution of CFC4 on December 30, 2010. Under the definition of aggregate foreign cash position in paragraph (f)(8)(i) of this section, the definition of pro rata share of a cash position in paragraph (f)(30)(iii) of this section, and the definitions of the final cash measurement date, second cash measurement date, and first cash measurement date in paragraphs (f)(24), (25), and (31) of this section, the cash measurement dates of the specified foreign corporations to be taken into account by USP in determining its aggregate foreign cash position are summarized in the following table:

CASH MEASUREMENT DATES

| | Final | Second | First |
|---|---|---|---|
| CFC1 | December 31, 2017 | December 31, 2016 | December 31, 2015. |
| CFC2 | N/A | N/A | December 31, 2015. |
| CFC3 | November 30, 2018 | November 30, 2016 | November 30, 2015. |
| CFC4 | N/A | N/A | N/A. |

*Example 8. Determination of section 958(a) U.S. shareholder in case of a controlled domestic partnership.* (i) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1 and CFC2. CFC1 and CFC2 own 60% and 40%, respectively, of the interests in the capital and profits of DPS, a domestic partnership. DPS owns all of the stock of CFC3 and CFC4. This ownership structure has existed since the date of formation of CFC1, CFC2, CFC3, and CFC4. CFC1, CFC2, CFC3, and CFC4 are each a foreign corporation. USP, DPS, CFC1, CFC2, CFC3, and CFC4 have calendar year taxable years. On both E&P measurement dates, CFC3 has 50u of accumulated post-1986 deferred foreign income. On both E&P measurement dates, CFC4 has a deficit in post-1986 earnings and profits of 30u. On all cash measurement dates, CFC1, CFC2, and CFC3 each have a cash position of 0u, and CFC4 has a cash position of 200u.

(ii) *Analysis.* DPS is a controlled domestic partnership with respect to USP within the meaning of paragraph (e)(2) of this section, because more than 50% of the interests in its capital and profits are owned by persons related to USP within the meaning of section 267(b), CFC1 and CFC2, and thus DPS is controlled by USP and related persons. Without regard to paragraph (e) of this section, DPS is a section 958(a) U.S. shareholder of CFC3 and CFC4, each of which is a controlled foreign corporation. If DPS were treated as foreign, CFC3 and CFC4 would each continue to be a controlled foreign corporation, and USP would be treated as a section 958(a) U.S. shareholder of each of CFC3 and CFC4, and would be treated as owning (within the meaning of section 958(a)) tested section 958(a) stock of each of CFC3 and CFC4 through CFC1 and CFC2, which are both partners in DPS. Thus, under paragraph (e)(1) of this section, DPS is treated as a foreign partnership for purposes of determining the section 958(a) U.S. shareholder of both CFC3 and CFC4 and the section 958(a) stock of both CFC3 and CFC4 owned by the section 958(a) U.S. shareholder. Thus, USP's pro rata share of CFC3's section 965(a) earnings amount is 50u, and its pro rata share of CFC4's specified E&P deficit is 30u. USP's aggregate foreign cash position is 200u. DPS is not a

section 958(a) shareholder with respect to either CFC3 or CFC4.

■ **Par. 6.** Section 1.965–2 is added to read as follows:

**§ 1.965–2 Adjustments to earnings and profits and basis.**

(a) *Scope.* This section provides rules relating to adjustments to earnings and profits and basis to determine and account for the application of section 965(a) and (b) and § 1.965–1(b) and a rule that limits the amount of gain recognized under section 961(b)(2) by reason of distributions attributable to section 965 previously taxed earnings and profits (as defined in paragraph (g)(1)(ii) of this section) in the inclusion year. Paragraph (b) of this section provides rules relating to adjustments to earnings and profits of a specified foreign corporation in its last taxable year that begins before January 1, 2018, for purposes of applying sections 959 and 965. Paragraph (c) of this section provides rules regarding adjustments to earnings and profits by reason of section 965(a). Paragraph (d) of this section provides rules regarding adjustments to earnings and profits by reason of section 965(b). Paragraph (e) provides rules regarding adjustments to basis by reason of section 965(a). Paragraph (f) of this section provides an election to make certain adjustments to basis corresponding to adjustments to earnings and profits by reason of section 965(b). Paragraph (g) of this section provides rules that limit the amount of gain recognized in connection with the application of section 961(b)(2) and that require related reductions in basis. Paragraph (h) of this section provides rules regarding basis adjustments. Paragraph (i) of this section provides definitions that apply for purposes of this section. Paragraph (j) of this section provides examples illustrating the application of this section.

(b) *Determination of and adjustments to earnings and profits in the last taxable year of a specified foreign corporation that begins before January 1, 2018, for purposes of applying sections 959 and 965.* For the last taxable year of a specified foreign corporation that begins before January 1, 2018, and the taxable year of a section 958(a) U.S. shareholder in which or with which such year ends, the adjustments to earnings and profits described in paragraphs (b)(1) through (b)(5) of this section are applied in sequence.

(1) The subpart F income of the specified foreign corporation is determined without regard to section 965(a), and earnings and profits of the specified foreign corporation that are described in section 959(c)(2) with respect to the section 958(a) U.S. shareholder are increased to the extent of the section 958(a) U.S. shareholder's inclusion under section 951(a)(1)(A) without regard to section 965(a).

(2) The treatment of a distribution by the specified foreign corporation to another specified foreign corporation that is made before January 1, 2018, is determined under section 959.

(3) Each of the post-1986 earnings and profits (including a deficit) of the specified foreign corporation, the accumulated post-1986 deferred foreign income of the specified foreign corporation, the section 965(a) earnings amount of the specified foreign corporation, and the section 965(a) inclusion amount with respect to the specified foreign corporation, if any, is determined, and the earnings and profits (including a deficit) of the specified foreign corporation are adjusted as provided in paragraphs (c) and (d) of this section. For a rule disregarding subpart F income earned after an E&P measurement date for purposes of calculating accumulated post-1986 deferred foreign income as of the E&P measurement date, see § 1.965–1(f)(7)(ii).

(4) The treatment of all distributions from the specified foreign corporation other than those described in paragraph (b)(2) of this section is determined under section 959.

(5) An amount is determined under section 956 with respect to the specified foreign corporation and the section 958(a) U.S. shareholder; earnings and profits of the specified foreign corporation described in sections 959(c)(2) with respect to the section 958(a) U.S. shareholder are reclassified as earnings and profits described in section 959(c)(1) with respect to the section 958(a) U.S. shareholder to the extent the amount determined under section 956 would, but for section 959(a)(2), be included by the section 958(a) U.S. shareholder under section 951(a)(1)(B); and earnings and profits described in section 959(c)(1) with respect to the section 958(a) U.S. shareholder are further increased to the extent of the section 958(a) U.S. shareholder's inclusion under section 951(a)(1)(B).

(c) *Adjustments to earnings and profits by reason of section 965(a).* The earnings and profits of a deferred foreign income corporation described in section 959(c)(2) with respect to a section 958(a) U.S. shareholder are increased by an amount equal to the section 965(a) inclusion amount of the section 958(a) U.S. shareholder with respect to the deferred foreign income corporation, if any, translated (if necessary) into the functional currency of the deferred foreign income corporation using the spot rate on December 31, 2017, provided the section 965(a) inclusion amount is included in income by the section 958(a) U.S. shareholder. For purposes of the section 965 regulations, the earnings and profits described in section 959(c)(2) by reason of this paragraph (c) and the earnings and profits initially described in section 959(c)(2) by reason of this paragraph (c) but subsequently reclassified as earnings and profits described in section 959(c)(1), if any, are referred to as *section 965(a) previously taxed earnings and profits.* Furthermore, the earnings and profits (including a deficit) of the deferred foreign income corporation that are described in section 959(c)(3) (or that would be described in section 959(c)(3) but for the application of section 965(a) and the section 965 regulations) are reduced (or, in the case of a deficit, increased) by an amount equal to the section 965(a) previously taxed earnings and profits.

(d) *Adjustments to earnings and profits by reason of section 965(b)*—(1) *Adjustments to earnings and profits described in section 959(c)(2) and (c)(3) of deferred foreign income corporations.* The earnings and profits of a deferred foreign income corporation described in section 959(c)(2) with respect to a section 958(a) U.S. shareholder are increased by an amount equal to the reduction to the section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of the deferred foreign income corporation under section 965(b), § 1.965–1(b)(2), and § 1.965–8(b), as applicable, translated (if necessary) into the functional currency of the deferred foreign income corporation using the spot rate on December 31, 2017, provided the section 958(a) U.S. shareholder includes the section 965(a) inclusion amount with respect to the deferred foreign income corporation in income. For purposes of the section 965 regulations, the earnings and profits described in section 959(c)(2) by reason of this paragraph (d) and the earnings and profits initially described in section 959(c)(2) by reason of this paragraph (d) but subsequently reclassified as earnings and profits described in section 959(c)(1) are referred to as *section 965(b) previously taxed earnings and profits.* Furthermore, the earnings and profits (including a deficit) described in section 959(c)(3) of the deferred foreign income corporation (or that would be described in section 959(c)(3) but for the application of section 965(b) and the

section 965 regulations) are reduced (or, in the case of a deficit, increased) by an amount equal to the section 965(b) previously taxed earnings and profits.

(2) *Adjustments to earnings and profits described in section 959(c)(3) of E&P deficit foreign corporations*—(i) *Increase in earnings and profits by an amount equal to the portion of the section 958(a) U.S. shareholder's pro rata share of the specified E&P deficit taken into account*—(A*) In general.* For an E&P deficit foreign corporation's last taxable year that begins before January 1, 2018, the earnings and profits of the E&P deficit foreign corporation described in section 959(c)(3) are increased by an amount equal to the portion of a section 958(a) U.S. shareholder's pro rata share of the specified E&P deficit of the E&P deficit foreign corporation taken into account under section 965(b), § 1.965–1(b)(2), and § 1.965–8(b), as determined under paragraph (d)(2)(ii) of this section, translated (if necessary) into the functional currency of the E&P deficit foreign corporation using the spot rate on December 31, 2017. For purposes of section 316, the earnings and profits of the E&P deficit foreign corporation attributable to the increase described in the preceding sentence are not treated as earnings and profits of the taxable year described in section 316(a)(2). See also § 1.965–6(c)(3) for the timing of this adjustment for purposes of determining a deemed paid credit allowed under sections 902 and 960.

(B) *Reduction of a qualified deficit.* For purposes of section 952, a section 958(a) U.S. shareholder's pro rata share of the earnings and profits of an E&P deficit foreign corporation is increased by an amount equal to the portion of the section 958(a) U.S. shareholder's pro rata share of the specified E&P deficit of the E&P deficit foreign corporation taken into account under section 965(b), § 1.965–1(b)(2), or § 1.965–8(b), as applicable, as determined under paragraph (d)(2)(ii) of this section, translated (if necessary) into the functional currency of the E&P deficit foreign corporation using the spot rate on December 31, 2017, and such increase is attributable to the same activity to which the deficit so taken into account was attributable.

(ii) *Determination of portion of a section 958(a) U.S. shareholder's pro rata share of a specified E&P deficit taken into account*—(A) *In general.* The portion of a section 958(a) U.S. shareholder's pro rata share of a specified E&P deficit of an E&P deficit foreign corporation taken into account under section 965(b), § 1.965–1(b)(2), or § 1.965–8(b), as applicable, is 100 percent of the section 958(a) U.S. shareholder's pro rata share of the specified E&P deficit if either of the following conditions is satisfied:

(*1*) The section 958(a) U.S. shareholder (including a consolidated group of which the section 958(a) U.S. shareholder is a member) does not have an excess aggregate foreign E&P deficit (as defined in § 1.965–8(f)(7)(i)), or

(*2*) If the section 958(a) U.S. shareholder is a member of an affiliated group in which not all members are members of the same consolidated group, the amount described in § 1.965–8(f)(1)(i)(B) with respect to the affiliated group is equal to or greater than the amount described § 1.965–8(f)(1)(i)(A).

(B) *Designation of portion of a section 958(a) U.S. shareholder's pro rata share of a specified E&P deficit taken into account.* If neither the condition in paragraph (d)(2)(ii)(A)(*1*) nor the condition in paragraph (d)(2)(ii)(A)(*2*) is satisfied with respect to a section 958(a) U.S. shareholder, then the section 958(a) U.S. shareholder must designate the portion taken into account by reporting to each E&P deficit foreign corporation of the section 958(a) U.S. shareholder, and maintaining in its books and records a statement setting forth, the following information—

(*1*) The portion of the section 958(a) shareholder's pro rata share of the specified E&P deficit of the E&P deficit foreign corporation taken into account under section 965(b), § 1.965–1(b)(2), or § 1.965–8(b), as designated under § 1.965–8(c), as applicable, and

(*2*) In the case of an E&P deficit foreign corporation that has a qualified deficit (as determined under section 952 and § 1.952–1), the portion (if any) of the section 958(a) shareholder's pro rata share of the specified E&P deficit of the E&P deficit foreign corporation taken into account under paragraph (d)(2)(ii)(B)(*1*) of this section that is attributable to a qualified deficit, including the qualified activities to which such portion is attributable.

(e) *Adjustments to basis by reason of section 965(a)*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, a section 958(a) U.S. shareholder's basis in section 958(a) stock of a deferred foreign income corporation, or a section 958(a) U.S. shareholder's basis in applicable property with respect to a deferred foreign income corporation, is increased by the section 958(a) U.S. shareholder's section 965(a) inclusion amount with respect to the deferred foreign income corporation included in income by the section 958(a) U.S. shareholder. *See section 961(a).*

(2) [Reserved]

(f) *Adjustments to basis by reason of section 965(b)*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, no adjustments to basis of stock or property are made under section 961 (or any other provision of the Code) to take into account the reduction to a section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of a deferred foreign income corporation under section 965(b), § 1.965–1(b)(2), or § 1.965–8(b), as applicable.

(2) *Election to make adjustments to basis to account for the application of section 965(b)*—(i) *In general.* If a section 958(a) U.S. shareholder makes the election as provided in this paragraph (f)(2), the adjustments to basis described in paragraph (f)(2)(ii) of this section are made with respect to each deferred foreign income corporation and each E&P deficit foreign corporation in which the section 958(a) U.S. shareholder owns section 958(a) stock.

(ii) *Basis adjustments*—(A) *Increase in basis with respect to a deferred foreign income corporation.* Except as provided in paragraph (f)(2)(ii)(C) of this section, a section 958(a) U.S. shareholder's basis in section 958(a) stock of a deferred foreign income corporation, or a section 958(a) U.S. shareholder's basis in applicable property with respect to a deferred foreign income corporation, is increased by an amount equal to the section 965(b) previously taxed earnings and profits of the deferred foreign income corporation with respect to the section 958(a) U.S. shareholder, translated (if necessary) into U.S. dollars using the spot rate on December 31, 2017.

(B) *Reduction in basis with respect to an E&P deficit foreign corporation.* Except as provided in paragraph (f)(2)(ii)(C) of this section, a section 958(a) U.S. shareholder's basis in section 958(a) stock of an E&P deficit foreign corporation, or a section 958(a) U.S. shareholder's basis in applicable property with respect to an E&P deficit foreign corporation, is reduced by an amount equal to the portion of the section 958(a) U.S. shareholder's pro rata share of the specified E&P deficit of the E&P deficit foreign corporation taken into account under section 965(b), § 1.965–1(b)(2), and § 1.965–8(b), as applicable, as determined under paragraph (d)(2)(ii) of this section, translated (if necessary) into U.S. dollars using the spot rate on December 31, 2017.

(C) *Section 962 election.* [Reserved]

(iii) *Rules regarding the election*—(A) *Consistency requirement.* In order for the election described in this paragraph (f)(2) to be effective, a section 958(a)

U.S. shareholder and each person that is a section 958(a) U.S. shareholder that is related to the section 958(a) U.S. shareholder must make the election described in this paragraph (f)(2). For purposes of this paragraph (f)(2)(iii)(A), a person is treated as related to a section 958(a) U.S. shareholder if the person bears a relationship to the section 958(a) U.S. shareholder described in section 267(b) or 707(b).

(B) *Manner of making election*—(*1*) *Timing*—(*i*) *In general.* Except as provided in paragraph (f)(2)(iii)(B)(*1*)(*ii*) of this section, the election provided in this paragraph (f)(2) must be made no later than the due date (taking into account extensions, if any) for the section 958(a) U.S. shareholder's return for the first taxable year that includes the last day of the last taxable year of a deferred foreign income corporation or E&P deficit foreign corporation of the shareholder that begins before January 1, 2018. Relief is not available under § 301.9100–2 or 301.9100–3 to file a late election.

(*ii*) *Transition rule.* If the due date referred to in paragraph (f)(2)(iii)(B)(*1*)(*i*) of this section occurs before September 10, 2018, the election must be made by October 9, 2018.

(*2*) *Election statement.* Except as otherwise provided in publications, forms, instructions, or other guidance, to make the election provided in this paragraph (f)(2), a section 958(a) U.S. shareholder must attach a statement, signed under penalties of perjury, to its return for the first taxable year that includes the last day of the last taxable year of a deferred foreign income corporation or E&P deficit foreign corporation of the shareholder that begins before January 1, 2018. The statement must include the section 958(a) U.S. shareholder's name and taxpayer identification number and a statement that the section 958(a) U.S. shareholder and all related persons, as defined in paragraph (f)(2)(iii)(A) of this section, make the election provided in this paragraph (f)(2).

(g) *Gain reduction rule*—(1) *Reduction in gain recognized under section 961(b)(2) by reason of distributions attributable to section 965 previously taxed earnings and profits in the inclusion year*—(i) *In general.* If a section 958(a) U.S. shareholder receives a distribution from a deferred foreign income corporation (including through a chain of ownership described under section 958(a)) during the inclusion year of the deferred foreign income corporation that is attributable to section 965 previously taxed earnings and profits of the deferred foreign income corporation, then the amount of gain that otherwise would be recognized under section 961(b)(2) by the section 958(a) U.S. shareholder with respect to the section 958(a) U.S. shareholder's section 958(a) stock of the deferred foreign income corporation or interest in applicable property with respect to the deferred foreign income corporation is reduced (but not below zero) by an amount equal to the section 965 previously taxed earnings and profits of the deferred foreign income corporation with respect to the section 958(a) U.S. shareholder.

(ii) *Definition of section 965 previously taxed earnings and profits.* For purposes of paragraph (g)(1)(i) of this section, the term *section 965 previously taxed earnings and profits* means, with respect to a deferred foreign income corporation and a section 958(a) U.S. shareholder, the sum of the section 965(a) previously taxed earnings and profits of the deferred foreign income corporation with respect to the section 958(a) U.S. shareholder, and, if the section 958(a) U.S. shareholder has made the election described in paragraph (f)(2) of this section, the section 965(b) previously taxed earnings and profits of the deferred foreign income corporation with respect to the section 958(a) U.S. shareholder.

(2) *Reduction in basis by an amount equal to the gain reduction amount.* If a section 958(a) U.S. shareholder does not recognize gain under section 961(b)(2) by reason of paragraph (g)(1) of this section with respect to a distribution from a deferred foreign income corporation (including through a chain of ownership described under section 958(a)), the section 958(a) U.S. shareholder's basis in the section 958(a) stock of the deferred foreign income corporation, or the section 958(a) U.S. shareholder's basis in the applicable property with respect to the deferred foreign income corporation, is reduced by the amount of gain that would otherwise be recognized by the section 958(a) U.S. shareholder without regard to paragraph (g)(1) of this section.

(h) *Rules of application for specified basis adjustments.* This paragraph (h) applies for purposes of making any adjustment to the basis of section 958(a) stock or applicable property with respect to a specified foreign corporation described in paragraph (e), (f)(2), or (g)(2) of this section (collectively, *specified basis adjustments,* and each a *specified basis adjustment*).

(1) *Timing of basis adjustments.* A specified basis adjustment to section 958(a) stock or applicable property with respect to a specified foreign corporation is made as of the close of the last day of the last taxable year of the specified foreign corporation that begins before January 1, 2018.

(2) *Netting of basis adjustments.* If one or more specified basis adjustments occur on the same day with respect to the same section 958(a) stock or applicable property, a single basis adjustment is made as of the close of such day with respect to such stock or applicable property in an amount equal to the net amount, if any, of the increase or reduction, as applicable.

(3) *Gain recognition for reduction in excess of basis.* The excess (if any) of a net reduction in basis with respect to section 958(a) stock or applicable property of a section 958(a) U.S. shareholder by reason of one or more specified basis adjustments, over the section 958(a) U.S. shareholder's basis in such stock or applicable property without regard to the specified basis adjustments is treated as gain from the sale or exchange of property.

(4) *Adjustments with respect to each share*—(i) *Section 958(a) stock.* If a specified basis adjustment is made with respect to section 958(a) stock, the specified basis adjustment is made with respect to each share of the section 958(a) stock in a manner consistent with the section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount or specified E&P deficit, as applicable, by reason of such share.

(ii) *Applicable property.* If a specified basis adjustment is made with respect to applicable property, the adjustment is made with respect to the applicable property in a manner consistent with the application of paragraph (h)(4)(i) of this section.

(5) *Stock or property for which adjustments are made*—(i) *In general.* Except as provided in paragraph (h)(5)(ii) of this section, a specified basis adjustment is made solely with respect to section 958(a) stock owned by the section 958(a) U.S. shareholder within the meaning of section 958(a)(1)(A) or applicable property owned directly by the section 958(a) U.S. shareholder.

(ii) *Special rule for an interest in a foreign pass-through entity.* If the applicable property of the section 958(a) U.S. shareholder described in paragraph (h)(5)(i) of this section is an interest in a foreign pass-through entity, then, for purposes of determining the foreign pass-through entity's basis in section 958(a) stock or applicable property, as applicable, with respect to the section 958(a) U.S. shareholder, a specified basis adjustment is made with respect to section 958(a) stock or applicable property of the section 958(a) U.S. shareholder owned through the foreign

pass-through entity in the same manner as if the section 958(a) stock or applicable property were owned directly by the section 958(a) U.S. shareholder. In the case of tiered foreign pass-through entities, this paragraph (h)(5)(ii) applies with respect to each foreign pass-through entity.

(i) *Definitions.* This paragraph (i) provides definitions that apply for purposes of this section.

(1) *Applicable property.* The term *applicable property* means, with respect to a section 958(a) U.S. shareholder and a specified foreign corporation, property owned by the section 958(a) U.S. shareholder (including through one or more foreign pass-through entities) by reason of which the section 958(a) U.S. shareholder is considered under section 958(a)(2) as owning section 958(a) stock of the specified foreign corporation.

(2) *Foreign pass-through entity.* The term *foreign pass-through entity* means a foreign partnership or a foreign estate or trust (as defined in section 7701(a)(31)).

(3) *Property.* The term *property* has the meaning provided in § 1.961–1(b)(1).

(j) *Examples.* The following examples illustrate the application of this section.

*Example 1. Determination of accumulated post-1986 deferred foreign income with subpart F income earned before E&P measurement date on November 2, 2017.* (i) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1, a foreign corporation, which owns all of the stock of CFC2, also a foreign corporation. USP, CFC1, and CFC2 all have taxable years ending December 31, 2017. As of January 1, 2017, CFC1 has no earnings and profits, and CFC2 has 100u of earnings and profits described in section 959(c)(3) that were accumulated in taxable years beginning after December 31, 1986, while CFC2 was a specified foreign corporation. On March 1, 2017, CFC1 earns 30u of subpart F income (as defined in section 952), and CFC2 earns 20u of subpart F income. On July 1, 2017, CFC2 distributes 40u to CFC1. On November 1, 2017, CFC1 distributes 60u to USP. USP does not have an aggregate foreign E&P deficit.

(ii) *Analysis.* (A) *Adjustments to section 959(c) classification of earnings and profits without regard to section 965.* USP determines its inclusion under section 951(a)(1)(A) without regard to section 965(a), which is 30u with respect to CFC1 and 20u with respect to CFC2 for their taxable years ending December 31, 2017. As a result of the inclusions under section 951(a)(1)(A), CFC1 and CFC2 increase their earnings and profits described in section 959(c)(2) by 30u and 20u, respectively.

(B) *Distributions between specified foreign corporations before January 1, 2018.* The distribution of 40u from CFC2 to CFC1 is treated as a distribution of 20u out of earnings and profits described in section 959(c)(2) (attributable to inclusions under section 951(a)(1)(A) without regard to section 965(a)) and 20u out of earnings and profits described in section 959(c)(3).

(C) *Section 965(a) inclusion amount.* USP determines whether CFC1 and CFC2 are deferred foreign income corporations, and, if they are, determines its section 965(a) inclusion amounts with respect to CFC1 and CFC2. Because USP wholly owns CFC1 and CFC2 under section 958(a) and USP does not have an aggregate foreign E&P deficit, USP's section 965(a) inclusion amount with respect to each of CFC1 and CFC2, respectively, equals the section 965(a) earnings amount of CFC1 and CFC2, respectively.

*(1) CFC1 section 965(a) earnings amount.* The section 965(a) earnings amount with respect to CFC1 is 20u, the amount of its accumulated post-1986 deferred foreign income as of both November 2, 2017, and December 31, 2017, which is equal to 70u of post-1986 earnings and profits (30u earned and 40u attributable to the CFC2 distribution) reduced by 50u of such post-1986 earnings and profits described in section 959(c)(2) (30u earned and 20u attributable to the CFC2 distribution) under section 965(d)(2)(B) and § 1.965–1(f)(7)(i)(B). Under section 965(d)(3)(B) and § 1.965–1(f)(29)(i)(B), the post-1986 earnings and profits of CFC1 are not reduced by the 60u distribution to USP.

*(2) CFC2 section 965(a) earnings amount.* The section 965(a) earnings amount with respect to CFC2 is 80u, the amount of its accumulated post-1986 deferred foreign income as of both November 2, 2017, and December 31, 2017, which is equal to the amount of CFC2's post-1986 earnings and profits of 80u. CFC2's accumulated post-1986 deferred foreign income is equal to its post-1986 earnings and profits because CFC2 does not have earnings and profits that are attributable to income of the specified foreign corporation that is effectively connected with the conduct of a trade or business within the United States and subject to tax under chapter 1, or that, if distributed, would be excluded from the gross income of a United States shareholder under section 959 or from the gross income of another shareholder if such shareholder were a United States shareholder, and therefore no adjustment is made under section 965(d)(2) or § 1.965–1(f)(7). CFC2's 80u of post-1986 earnings and profits consists of 120u of earnings and profits that it earned, reduced by the 40u distribution to CFC1 under section 965(d)(3)(B) and § 1.965–1(f)(29)(i)(B). The amount of the reduction to the post-1986 earnings and profits of CFC2 for the 40u distribution is not limited by § 1.965–1(f)(29)(i)(B) because CFC1's post-1986 earnings and profits are increased by 40u as a result of the distribution. Furthermore, because the 40u distribution was made on July 1, 2017, which is before the E&P measurement date on November 2, 2017, § 1.965–4(f) is not relevant.

*(3) Effect on earnings and profits described in section 959(c)(2) and (3).* CFC1 and CFC2 increase their earnings and profits described in section 959(c)(2) by USP's section 965(a) inclusion amounts with respect to CFC1 and CFC2, 20u and 80u, respectively, and reduce their earnings and profits described in section 959(c)(3) by an equivalent amount.

(D) *Distribution to United States shareholder.* The distribution from CFC1 to USP is treated as a distribution of 60u out of the earnings and profits of CFC1 described in section 959(c)(2), which include earnings and profits attributable to the section 965(a) inclusion amount taken into account by USP.

*Example 2. Determination of accumulated post-1986 deferred foreign income with subpart F income earned after E&P measurement date on November 2, 2017.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 1* of this paragraph (j), except that on December 1, 2017, CFC1 earns an additional 50u of subpart F income (as defined in section 952).

(ii) *Analysis.* (A) *Adjustments to section 959(c) classification of earnings and profits without regard to section 965.* USP determines its inclusion under section 951(a)(1)(A) without regard to section 965(a), which is 80u with respect to CFC1 and 20u with respect to CFC2 for their taxable years ending December 31, 2017. As a result of the inclusions under section 951(a)(1)(A), CFC1 and CFC2 increase their earnings and profits described in section 959(c)(2) by 80u and 20u, respectively.

(B) *Distributions between specified foreign corporations before January 1, 2018.* The analysis is the same as in paragraph (ii)(B) of *Example 1* of this paragraph (j).

(C) *Section 965(a) inclusion amount.* USP determines whether CFC1 and CFC2 are deferred foreign income corporations, and, if they are, determines its section 965(a) inclusion amounts with respect to CFC1 and CFC2. Because USP wholly owns CFC1 and CFC2 under section 958(a) and USP does not have an aggregate foreign E&P deficit, USP's section 965(a) inclusion amount with respect to each of CFC1 and CFC2, respectively, equals the section 965(a) earnings amount of CFC1 and CFC2, respectively.

*(1) CFC1 section 965(a) earnings amount.* The section 965(a) earnings amount with respect to CFC1 is 20u, the greater of—

*(i)* The amount of its accumulated post-1986 deferred foreign income as of November 2, 2017, 20u, which is equal to 70u of post-1986 earnings and profits (30u earned and 40u attributable to the CFC2 distribution) reduced by 50u of such post-1986 earnings and profits described in section 959(c)(2) without regard to the subpart F income earned after November 2, 2017 (30u earned and 20u attributable to the CFC2 distribution) under section 965(d)(2)(B) and § 1.965–1(f)(7)(i)(B) and (ii), and

*(ii)* The amount of its accumulated post-1986 deferred foreign income as of December 31, 2017, 20u, which is equal to 120u of post-1986 earnings and profits (80u earned and 40u attributable to the CFC2 distribution) reduced by 100u of such post-1986 earnings and profits described in section 959(c)(2) with regard to the subpart F income earned on or before December 31, 2017 (80u earned and 20u attributable to the CFC2 distribution) under section 965(d)(2)(B) and § 1.965–1(f)(7)(i)(B) and (ii).

*(2) CFC2 section 965(a) earnings amount.* The analysis is the same as in paragraph (ii)(C)*(2)* of *Example 1* of this paragraph (j).

*(3) Effect on earnings and profits described in section 959(c)(2) and (3).* The analysis is the same as in paragraph (ii)(C)*(3)* of *Example 1* of this paragraph (j).

(D) *Distribution to United States shareholder.* The analysis is the same as in paragraph (ii)(D) of *Example 1* of this paragraph (j).

*Example 3. Determination of accumulated post-1986 deferred foreign income with subpart F income earned after E&P measurement date on November 2, 2017, but previously taxed earnings and profits attributable to the subpart F income distributed before E&P measurement date on November 2, 2017.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 1* of this paragraph (j), except that on December 1, 2017, CFC2 earns an additional 50u of subpart F income (as defined in section 952).

(ii) *Analysis.* (A) *Adjustments to section 959(c) classification of earnings and profits without regard to section 965.* USP determines its inclusion under section 951(a)(1)(A) without regard to section 965(a), which is 30u with respect to CFC1 and 70u with respect to CFC2 for their taxable years ending December 31, 2017. As a result of the inclusions under section 951(a)(1)(A), CFC1 and CFC2 increase their earnings and profits described in section 959(c)(2) by 30u and 70u, respectively.

(B) *Distributions between specified foreign corporations before January 1, 2018.* The distribution of 40u from CFC2 to CFC1 is treated as a distribution of 40u out of earnings and profits described in section 959(c)(2) (attributable to inclusions under section 951(a)(1)(A) without regard to section 965(a)).

(C) *Section 965(a) inclusion amount.* USP determines whether CFC1 and CFC2 are deferred foreign income corporations, and, if they are, determines its section 965(a) inclusion amounts with respect to CFC1 and CFC2. Because USP wholly owns CFC1 and CFC2 under section 958(a) and USP does not have an aggregate foreign E&P deficit, USP's section 965(a) inclusion amount with respect to each of CFC1 and CFC2, respectively, equals the section 965(a) earnings amount, if any, of CFC1 and CFC2, respectively.

*(1) CFC1 section 965(a) earnings amount.* CFC1 is not a deferred foreign income corporation and does not have a section 965(a) earnings amount, because the amount of its accumulated post-1986 deferred foreign income as of both November 2, 2017, and December 31, 2017, is 0u, which is equal to 70u of post-1986 earnings and profits (30u earned and 40u attributable to the CFC2 distribution) reduced by 70u of such post-1986 earnings and profits described in section 959(c)(2) (30u earned and 40u attributable to the CFC2 distribution) under section 965(d)(2)(B) and § 1.965–1(f)(7)(i)(B).

*(2) CFC2 section 965(a) earnings amount.* The section 965(a) earnings amount with respect to CFC2 is 100u, the greater of—

*(i)* The amount of its accumulated post-1986 deferred foreign income as of November 2, 2017, 80u. CFC2's 80u of accumulated post-1986 deferred foreign income as of November 2, 2017 is equal to its 80u of post-1986 earnings and profits because no adjustment is made under section 965(d)(2) or § 1.965–1(f)(7), as CFC2 does not have earnings and profits that are attributable to income of the specified foreign corporation that is effectively connected with the conduct of a trade or business within the United States and subject to tax under chapter 1, or that, if distributed, would be excluded from the gross income of a United States shareholder under section 959 or from the gross income of another shareholder if such shareholder were a United States shareholder, without regard to the subpart F income earned after November 2, 2017. CFC2's 80u of post-1986 earnings and profits consists of 120u of earnings and profits that it earned, reduced by the 40u distribution to CFC1 under section 965(d)(3)(B) and § 1.965–1(f)(29)(i)(B). The amount of the reduction to the post-1986 earnings and profits of CFC2 for the 40u distribution is not limited by § 1.965–1(f)(29)(i)(B) because CFC1's post-1986 earnings and profits are increased by 40u as a result of the distribution. Furthermore, because the 40u distribution was made on July 1, 2017, which is before any E&P measurement date, § 1.965–4(f) is not relevant.

*(ii)* The amount of its accumulated post-1986 deferred foreign income as of December 31, 2017, 100u, which is equal to 130u of post-1986 earnings and profits reduced by 30u of such post-1986 earnings and profits described in section 959(c)(2) with regard to the subpart F income earned before December 31, 2017, under section 965(d)(2)(B) and § 1.965–1(f)(7)(i)(B) and (ii). CFC2's 130u of post-1986 earnings and profits consists of 170u of earnings and profits that it earned, reduced by the 40u distribution to CFC1 under section 965(d)(3)(B) and § 1.965–1(f)(29)(i)(B).

*(3) Effect on earnings and profits described in section 959(c)(2) and (3).* CFC2 increases its earnings and profits described in section 959(c)(2) by USP's section 965(a) inclusion amount with respect to CFC2, 100u, and reduces its earnings and profits described in section 959(c)(3) by an equivalent amount.

(D) *Distribution to United States shareholder.* The analysis is the same as in paragraph (ii)(D) of *Example 1* of this paragraph (j).

*Example 4. Distribution attributable to section 965(a) previously taxed earnings and profits.* (i) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1, a specified foreign corporation that has no post-1986 earnings and profits (or deficit in post-1986 earnings and profits), and CFC1 owns all the stock of CFC2, a deferred foreign income corporation. USP is a calendar year taxpayer. CFC1's last taxable year beginning before January 1, 2018, ends on November 30, 2018; CFC2 has an inclusion year that ends on November 30, 2018. The functional currency of CFC1 and CFC2 is the U.S. dollar. USP's adjusted basis in the stock of CFC1 is zero, and CFC1's adjusted basis in the stock of CFC2 is zero. On January 1, 2018, CFC2 distributes $100x to CFC1, and CFC1 distributes $100x to USP. USP has a section 965(a) inclusion amount of $100x with respect to CFC2 that is taken into account for USP's taxable year ending December 31, 2018. CFC2 has no earnings and profits described in section 959(c)(1) or (2) other than section 965(a) previously taxed earnings and profits.

(ii) *Analysis.* Under paragraph (c) of this section, CFC2 has $100x of section 965(a) previously taxed earnings and profits with respect to USP. USP receives a distribution from CFC2 through a chain of ownership described in section 958(a) during the inclusion year of CFC2 that is attributable to the $100x of section 965(a) previously taxed earnings and profits of CFC2. Under paragraph (g)(1) of this section, the amount of gain that USP otherwise would recognize with respect to the stock of CFC1 under section 961(b)(2) is reduced (but not below zero) by $100x, the amount of CFC2's section 965(a) previously taxed earnings and profits with respect to USP. As of the close of November 30, 2018, USP's basis in CFC1 is increased under paragraph (e) of this section by USP's section 965(a) inclusion amount with respect to CFC2 ($100x), and is reduced under paragraph (g)(2) of this section by the amount of gain that would have been recognized by USP under section 961(b)(2) but for the application of paragraph (g)(1) of this section ($100x).

*Example 5. Distribution attributable to section 965(b) previously taxed earnings and profits; parent-subsidiary.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 4* of this paragraph (j), except that CFC1 has a specified E&P deficit of $100x. Because of the specified E&P deficit of CFC1, USP's section 965(a) inclusion amount with respect to CFC2 is reduced to zero pursuant to section 965(b)(1) and § 1.965–1(b)(2). USP makes the election described in paragraph (f)(2) of this section.

(ii) *Analysis.* (A) *Application of the gain reduction rule.* Under paragraph (d)(1) of this section, CFC2 has $100x of section 965(b) previously taxed earnings and profits with respect to USP, and, under paragraph (d)(2) of this section, CFC1's earnings and profits described in section 959(c)(3) are increased by $100x to $0. USP receives a distribution from CFC2 through a chain of ownership described in section 958(a) during the inclusion year of CFC2 that is attributable to the $100x of section 965(b) previously taxed earnings and profits of CFC2. Under paragraph (g)(1) of this section, the amount of gain that USP otherwise would recognize with respect to the stock of CFC1 under section 961(b)(2) is reduced (but not below zero) by $100x, the amount of CFC2's section 965(b) previously taxed earnings and profits with respect to USP under paragraph (d)(1) of this section.

(B) *Adjustments to the basis of CFC1.* Because USP makes the election described in paragraph (f)(2) of this section, as of the close of November 30, 2018, USP's basis in CFC1 is increased under paragraph (f)(2)(ii)(A) of this section by an amount equal to CFC2's section 965(b) previously taxed earnings and profits with respect to USP under paragraph (d)(1) of this section ($100x), reduced under paragraph (f)(2)(ii)(B) of this section by an amount equal to the portion of the specified E&P deficit of CFC1 taken into account in determining USP's section 965(a) inclusion amount with respect to CFC2 ($100x), and reduced under paragraph (g)(2) of this section by the amount of gain that would have been recognized by USP with respect to the stock of CFC1 under section 961(b)(2) but for the application of paragraph (g)(1) of this section ($100x). Under paragraph (h)(2) and (3) of

this section, the excess of the net reduction from the adjustments under paragraphs (f) and (g) of this section over USP's basis in the stock of CFC1 (in this case, $100x) is treated as gain recognized by USP from the sale or exchange of property.

*Example 6. Distribution attributable to section 965(b) previously taxed earnings and profits; brother-sister.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 5* of this paragraph (j), except that USP owns all the stock of CFC2, USP's adjusted basis in the stock of CFC2 is zero, CFC1 made no distributions, and on January 1, 2018, CFC2 distributes $100x to USP.

(ii) *Analysis.* (A) *Application of the gain reduction rule.* Under paragraph (d)(1) of this section, CFC2 has $100x of section 965(b) previously taxed earnings and profits with respect to USP, and, under paragraph (d)(2) of this section, CFC1's earnings and profits described in section 959(c)(3) (deficit of $100x) are increased by $100x to $0. USP receives a distribution from CFC2 during the inclusion year of CFC2 that is attributable to the $100x of section 965(b) previously taxed earnings and profits of CFC2. Under paragraph (g)(1) of this section, the amount of gain that USP otherwise would recognize with respect to the stock of CFC2 under section 961(b)(2) is reduced (but not below zero) by $100x, the amount of CFC2's section 965(b) previously taxed earnings and profits with respect to USP under paragraph (d)(1) of this section.

(B) *Adjustments to the basis of CFC1 and CFC2.* Because USP makes the election described in paragraph (f)(2) of this section, as of the close of November 30, 2018, USP's basis in the stock of CFC2 is increased under paragraph (f)(2)(ii)(A) of this section by the amount of CFC2's section 965(b) previously taxed earnings and profits with respect to USP under paragraph (d)(1) of this section ($100x) and reduced under paragraph (g)(2) of this section by the amount of gain that would have been recognized by USP with respect to the stock of CFC2 under section 961(b)(2) but for the application of paragraph (g)(1) of this section ($100x). As of the close of November 30, 2018, USP's basis in CFC1 is reduced under paragraph (f)(2)(ii)(B) of this section by an amount equal to the portion of USP's pro rata share of the specified E&P deficit of CFC1 taken into account in determining USP's section 965(a) inclusion amount with respect to CFC2 ($100x). Under paragraph (h)(3) of this section, the excess of the reduction under paragraph (f) of this section over USP's basis in the stock of CFC1 (in this case, $100x) is treated as gain recognized by USP from the sale or exchange of property.

■ **Par. 7.** Section 1.965–3 is added to read as follows:

**§ 1.965–3 Section 965(c) deductions.**

(a) *Scope.* This section provides rules regarding section 965(c) deductions and section 965(c) deduction amounts. Paragraph (b) of this section provides rules for disregarding certain assets for purposes of determining the aggregate foreign cash position of a section 958(a) U.S. shareholder. Paragraph (c) of this section provides rules for determining the aggregate foreign cash position for a section 958(a) U.S. shareholder inclusion year. Paragraph (d) of this section provides a rule regarding certain expatriated entities. Paragraph (e) of this section provides a rule for the treatment of section 965(c) deductions in connection with an election under section 962. Paragraph (f) of this section provides rules regarding the treatment of a section 965(c) deduction under certain provisions of the Internal Revenue Code. Paragraph (g) of this section provides a rule for domestic pass-through entities.

(b) *Rules for disregarding certain assets for determining aggregate foreign cash position*—(1) *Disregard of certain obligations between related specified foreign corporations.* In determining the aggregate foreign cash position of a section 958(a) U.S. shareholder, any account receivable, account payable, short-term obligation, or derivative financial instrument between a specified foreign corporation with respect to which the section 958(a) U.S. shareholder owns section 958(a) stock and a related specified foreign corporation on a cash measurement date is disregarded to the extent of the smallest of the product of the amount of the item on such cash measurement date of each specified foreign corporation and the section 958(a) U.S. shareholder's ownership percentage of section 958(a) stock of the specified foreign corporation owned by the section 958(a) U.S. shareholder on such date. For purposes of this paragraph (b)(1)(i), a specified foreign corporation is treated as a related specified foreign corporation with respect to another specified foreign corporation if, as of the cash measurement date referred to in the preceding sentence of each specified foreign corporation, the specified foreign corporations are related persons within the meaning of section 954(d)(3), substituting the term ''specified foreign corporation'' for ''controlled foreign corporation'' in each place that it appears.

(2) *Disregard of other assets upon demonstration of double-counting.* For purposes of determining the aggregate foreign cash position of a section 958(a) U.S. shareholder, the section 958(a) U.S. shareholder's pro rata share of the cash position of a specified foreign corporation on a cash measurement date is reduced by amounts of net accounts receivable, actively traded property, and short-term obligations to the extent such amounts are attributable to amounts taken into account in determining the section 958(a) U.S. shareholder's pro rata share of the cash position of another specified foreign corporation on such cash measurement date and to the extent not disregarded pursuant to paragraph (b)(1) of this section. However, the preceding sentence applies only if the section 958(a) U.S. shareholder attaches a statement containing the information outlined in paragraphs (b)(2)(i) through (v) of this section to its timely filed return (taking into account extensions, if any) for the section 958(a) U.S. shareholder inclusion year, or, if the section 958(a) U.S. shareholder has multiple section 958(a) U.S. shareholder inclusion years, the later of such years. Relief is not available under § 301.9100–2 or § 301.9100–3 to allow late filing of the statement. The statement must contain the following information with respect to each specified foreign corporation for which the cash position is reduced under this paragraph (b)(2)—

(i) A description of the asset that would be taken into account with respect to both specified foreign corporations,

(ii) A statement of the amount by which its pro rata share of the cash position of one specified foreign corporation is reduced,

(iii) A detailed explanation of why there would otherwise be double-counting, including the computation of the amount taken into account with respect to the other specified foreign corporation, and

(iv) An explanation of why paragraph (b)(1) of this section does not apply to disregard such amount.

(3) *Examples.* The following examples illustrate the application of this paragraph (b).

*Example 1.* (i) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1, a foreign corporation. CFC1 owns 95% of the only class of stock of CFC2, also a foreign corporation, and 40% of the only class of stock of CFC3, also a foreign corporation. The remaining 5% of the only class of stock of CFC2 is owned by a person unrelated to USP, CFC1, and CFC2; and the remaining 60% of the only class of stock of CFC3 is owned by a person unrelated to USP and CFC1. USP, CFC1, and CFC3 have calendar year taxable years. CFC2 has a taxable year ending on November 30. On November 15, 2015, CFC1 makes a loan of $100x to CFC2, which is required to be and is, in fact, repaid on January 1, 2016. On November 15, 2016, CFC2 sells inventory to CFC1 in exchange for an account receivable of $200x, which is required to be and is, in fact, repaid on December 15, 2016. On August 1, 2017, CFC1 makes a loan of $300x to CFC3, which is required to be and is, in fact, repaid on January 31, 2018.

(ii) *Analysis*—(A) *Loan from CFC1 to CFC2.* For purposes of determining the aggregate foreign cash position of USP, a section 958(a) U.S. shareholder of CFC1, under paragraph

(b)(1) of this section, because CFC1 and CFC2 are related within the meaning of paragraph (b)(1) of this section, the short-term obligation of CFC2 held by CFC1 outstanding on the first cash measurement date of each specified foreign corporation, November 30, 2015, and December 31, 2015, respectively, is disregarded to the extent of 95%, the smallest ownership percentage of section 958(a) stock of CFC1 and CFC2 owned by USP on such first cash measurement dates. Accordingly, USP only takes into account $5 ($100 − 95% of $100) of the short-term obligation in determining CFC1's cash position for purposes of determining its aggregate foreign cash position.

(B) *Account receivable of CFC1 held by CFC2.* Because the account receivable of CFC1 held by CFC2 on its second cash measurement date, November 30, 2016, is not outstanding on CFC1's second cash measurement date, December 31, 2016, paragraph (b)(1) of this section does not apply to disregard any portion of such account receivable.

(C) *Loan from CFC1 to CFC3.* Because CFC3 is not related to CFC1 within the meaning of paragraph (b)(1) of this section, paragraph (b)(1) of this section does not apply to disregard any portion of such short-term obligation.

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1,* except that on December 1, 2015, CFC1 sells 5% of the stock of CFC2 to an unrelated person.

(ii) *Analysis.* The analysis is the same as in *Example 1,* except that the short-term obligation of CFC2 held by CFC1 outstanding on both of their first cash measurement dates, November 30, 2015, and December 31, 2015, respectively, is disregarded under paragraph (b)(1) of this section to the extent of 90%, the smallest ownership percentage of section 958(a) stock of CFC1 and CFC2 by USP on such first cash measurement dates. Accordingly, USP takes into account $10 ($100 − 90% of $100) of the short-term obligation in determining CFC1's cash position for purposes of determining its aggregate foreign cash position.

*Example 3.* (i) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1, a foreign corporation, which owns 45% of the only class of stock of CFC2, also a foreign corporation. The remainder of the CFC2 stock is actively traded on an established financial market but is not owned by any person related to USP or CFC1. USP, CFC1, and CFC2 have calendar year taxable years. The value of the CFC2 stock owned by CFC1 is $500x on each of the cash measurement dates. Also on each of the cash measurement dates, CFC2 has $300x of assets described in section 965(c)(3)(B) and § 1.965–1(f)(16) that are taken into account in determining its cash position.

(ii) *Analysis.* For purposes of determining USP's aggregate foreign cash position, USP's pro rata share of the cash position of CFC1 on each cash measurement date may be reduced by the amount of the stock of CFC2 to the extent attributable to amounts taken into account in determining USP's pro rata share of the cash position of CFC2 on such cash measurement date (that is, to the extent of the $135x taken into account with respect to CFC2), provided USP attaches a statement to its timely filed return (taking into account extensions, if any) containing the following: A description of the CFC2 stock and the assets of CFC2 taken into account in determining its cash position; a statement that USP's pro rata share of the cash position of CFC1 is being reduced by $135x; the computation of the $135x taken into account with respect to CFC2; and an explanation of why paragraph (b)(1) of this section does not apply to disregard such amount.

*Example 4.* (i) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1 and CFC2, each a foreign corporation. USP, CFC1, and CFC2 have calendar year taxable years. CFC1 buys goods on credit from a third party for $100x and thus has an account payable of $100x. CFC1 modifies the goods and sells to CFC2 for $105x in exchange for an account receivable of $105x. CFC2 modifies the goods and sells to another third party for $110x in exchange for an account receivable of $110x. All of the accounts payable and accounts receivable are outstanding on the final cash measurement date.

(ii) *Analysis.* For purposes of determining USP's aggregate foreign cash position, on the final cash measurement date, CFC1 has net accounts receivable of $0, because, pursuant to paragraph (b)(1) of this section, CFC1's account receivable from CFC2 is disregarded, and CFC2 has net accounts receivable of $110, because, pursuant to paragraph (b)(1) of this section, CFC2's account payable to CFC1 is disregarded. USP cannot rely on the rule in paragraph (b)(2) of this section because no amounts attributable to CFC2's net accounts receivable are taken into account with respect to another specified foreign corporation.

(c) *Determination of aggregate foreign cash position for a section 958(a) U.S. shareholder inclusion year*—(1) *Single section 958(a) U.S. shareholder inclusion year.* If a section 958(a) U.S. shareholder has a single section 958(a) U.S. shareholder inclusion year, then the section 958(a) U.S. shareholder's aggregate foreign cash position for the section 958(a) U.S. shareholder inclusion year is equal to the aggregate foreign cash position of the section 958(a) U.S. shareholder.

(2) *Multiple section 958(a) U.S. shareholder inclusion years.* If a section 958(a) U.S. shareholder has multiple section 958(a) U.S. shareholder inclusion years, then the section 958(a) U.S. shareholder's aggregate foreign cash position for each section 958(a) U.S. shareholder inclusion year is determined by allocating the aggregate foreign cash position to a section 958(a) U.S. shareholder inclusion year under paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

(i) *Allocation to first section 958(a) U.S. shareholder inclusion year.* A portion of the aggregate foreign cash position of the section 958(a) U.S. shareholder is allocated to the first section 958(a) U.S. shareholder inclusion year in an amount equal to the lesser of the section 958(a) U.S. shareholder's aggregate foreign cash position, or the section 958(a) U.S. shareholder's aggregate section 965(a) inclusion amount for the section 958(a) U.S. shareholder inclusion year.

(ii) *Allocation to succeeding section 958(a) U.S. shareholder inclusion years.* The amount of the section 958(a) U.S. shareholder's aggregate foreign cash position allocated to any succeeding section 958(a) U.S. shareholder inclusion year equals the lesser of the excess, if any, of the section 958(a) U.S. shareholder's aggregate foreign cash position over the aggregate amount of its aggregate foreign cash position allocated to preceding section 958(a) U.S. shareholder inclusion years under paragraph (c)(2)(i) of this section and this paragraph (c)(2)(ii), or the section 958(a) U.S. shareholder's aggregate section 965(a) inclusion amount for such succeeding section 958(a) U.S. shareholder inclusion year.

(3) *Estimation of aggregate foreign cash position.* For purposes of determining the aggregate foreign cash position of a section 958(a) U.S. shareholder, the section 958(a) U.S. shareholder may assume that its pro rata share of the cash position of any specified foreign corporation whose last taxable year beginning before January 1, 2018, ends after the date the return for such section 958(a) U.S. shareholder inclusion year (*the estimated section 958(a) U.S. shareholder inclusion year*) is timely filed (taking into account extensions, if any) is zero as of the cash measurement date with which the taxable year of such specified foreign corporation ends. If a section 958(a) U.S. shareholder's pro rata share of the cash position of a specified foreign corporation is treated as zero pursuant to the preceding sentence, the amount described in § 1.965–1(f)(8)(i)(A) with respect to such section 958(a) U.S. shareholder in fact exceeds the amount described in § 1.965–1(f)(8)(i)(B) with respect to such section 958(a) U.S. shareholder, and the aggregate section 965(a) inclusion amount for the estimated section 958(a) U.S. shareholder inclusion year exceeds the amount described in § 1.965–1(f)(8)(i)(B) with respect to such section 958(a) U.S. shareholder, interest and penalties will not be imposed if such section 958(a) U.S. shareholder amends the return for the estimated section 958(a) U.S. shareholder inclusion year to account for the correct aggregate foreign cash position for the year. The amended return must be filed by the due date

(taking into account extensions, if any) for the return for the year after the estimated section 958(a) U.S. shareholder inclusion year.

(4) *Examples.* The following examples illustrate the application of this paragraph (c).

*Example 1. Estimation of aggregate foreign cash position for a section 958(a) U.S. shareholder inclusion year*—(i) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1, a foreign corporation, which owns all of the stock of CFC2, also a foreign corporation. USP is a calendar year taxpayer. CFC1 has a taxable year ending on December 31, and CFC2 has a taxable year ending on November 30. The cash position of CFC1 on each of December 31, 2015, December 31, 2016, and December 31, 2017, is $100x. The cash position of CFC2 on each of November 30, 2015, and November 30, 2016, is $200x. USP has a section 965(a) inclusion amount of $300x with respect to CFC1.

(ii) *Analysis.* In determining its aggregate foreign cash position for its 2017 taxable year, USP may assume that its pro rata share of the cash position of CFC2 will be zero as of November 30, 2018, for purposes of filing its return due on April 18, 2018 (or due on October 15, 2018, with extension). Therefore, USP's aggregate foreign cash position is treated as $300, which is the greater of (a) $300x, 50% of the sum of USP's pro rata shares of the cash position of CFC1 as of December 31, 2015, and December 31, 2016, and of the cash position of CFC2 as of November 30, 2015, and November 30, 2016, and (b) $100x, USP's pro rata share of the cash position of CFC1 as of December 31, 2017. If USP's pro rata share of the cash position of CFC2 as of November 30, 2018, in fact exceeds $200, USP must amend its return for its 2017 taxable year to reflect the correct aggregate foreign cash position by the due date for its return for its 2018 taxable year, April 15, 2019 (or October 15, 2019, with extension).

*Example 2. Allocation of aggregate foreign cash position among section 958(a) U.S. shareholder inclusion years*—(i) *Facts.* The facts are the same as in paragraph (i) of *Example 1* of this paragraph (c)(4), except that the cash position of each of CFC1 and CFC2 on all relevant cash measurement dates is $200, with the result that USP has an aggregate foreign cash position determined under § 1.965–1(f)(8)(i) of $400. For its 2017 taxable year, USP has a section 965(a) inclusion amount with respect to CFC1 of $300, and for its 2018 taxable year, USP has a section 965(a) inclusion amount with respect to CFC2 of $300.

(ii) *Analysis.* Under paragraph (c)(2)(i) of this section, USP's aggregate foreign cash position for 2017 is $300, which is the lesser of USP's aggregate foreign cash position determined under § 1.965–1(f)(8)(i) ($400) or the section 965(a) inclusion amount ($300) that USP takes into account in 2017. Under paragraph (c)(2)(ii) of this section, the amount of USP's aggregate foreign cash position for 2018 is $100, USP's aggregate foreign cash position determined under § 1.965–1(f)(8)(i) ($400) reduced by the amount of its aggregate foreign cash position for 2017 ($300) under paragraph (c)(2)(i) of this section.

(d) *Increase of income by section 965(c) deduction of an expatriated entity*—(1) *In general.* If a person is allowed a section 965(c) deduction and the person (or a successor) first becomes an expatriated entity, with respect to a surrogate foreign corporation, at any time during the 10-year period beginning on December 22, 2017, then the tax imposed by chapter 1 of the Internal Revenue Code is increased for the first taxable year in which such person becomes an expatriated entity by an amount equal to 35 percent of the person's section 965(c) deductions, and no credits are allowed against such increase in tax. The preceding sentence applies only if the surrogate foreign corporation first becomes a surrogate foreign corporation on or after December 22, 2017.

(2) *Definition of expatriated entity.* For purposes of paragraph (d)(1) of this section, the term *expatriated entity* has the same meaning given such term under section 7874(a)(2), except that such term does not include an entity if the surrogate foreign corporation with respect to the entity is treated as a domestic corporation under section 7874(b).

(3) *Definition of surrogate foreign corporation.* For purposes of paragraph (d)(1) of this section, the term *surrogate foreign corporation* has the meaning given such term in section 7874(a)(2)(B).

(e) *Section 962 election*—(1) *In general.* In the case of an individual (including a trust or estate) that makes an election under section 962, any section 965(c) deduction taken into account under § 1.962–1(b)(1)(i)(B) in determining taxable income as used in section 11 is not taken into account for purposes of determining the individual's taxable income under section 1.

(2) *Example.* The following example illustrates the application of the rule in this paragraph (e).

*Example.* (i) *Facts.* USI, a United States citizen, owns 10% of the capital and profits of USPRS, a domestic partnership that has a calendar year taxable year, the remainder of which is owned by foreign persons unrelated to USI or USPRS. USPRS owns all of the stock of FS, a foreign corporation that is a controlled foreign corporation with a calendar year taxable year. USPRS has a section 965(a) inclusion amount with respect to FS of $1,000 and has a section 965(c) deduction amount of $700. FS has no post-1986 foreign income taxes (as defined in section 902(c)(1) as in effect before December 22, 2017). USI makes a valid election under section 962 for 2017.

(ii) *Analysis.* USI's ''taxable income'' described in § 1.962–1(b)(1)(i) equals $100 (USI's domestic pass-through owner share of USPRS's section 965(a) inclusion amount) minus $70 (USI's domestic pass-through owner share of USPRS's section 965(c) deduction amount), or $30. No other deductions are allowed in determining this amount. USI's tax on the $30 section 965(a) inclusion will be equal to the tax that would be imposed on such amount under section 11 if USI were a domestic corporation. Under paragraph (e)(1) of this section, USI cannot deduct $70 for purposes of determining USI's taxable income that is subject to tax under section 1.

(f) *Treatment of section 965(c) deduction under certain provisions of the Internal Revenue Code*—(1) *Section 63(d).* A section 965(c) deduction is not treated as an itemized deduction for any purpose of the Internal Revenue Code.

(2) *Sections 705, 1367, and 1368*—(i) *Adjustments to basis.* In the case of a domestic partnership or S corporation—

(A) The aggregate amount of its section 965(a) inclusions net the aggregate amount of its section 965(c) deductions is treated as a separately stated item of net income solely for purposes of calculating basis under section 705(a) and § 1.705–1(a) and section 1367(a)(1) and § 1.1367–1(f), and

(B) The aggregate amount of its section 965(a) inclusions equal to the aggregate amount of its section 965(c) deductions is treated as income exempt from tax solely for purposes of calculating basis under sections 705(a)(1)(B), 1367(a)(1)(A), and § 1.1367–1(f).

(ii) *S corporation accumulated adjustments account.* In the case of an S corporation, the aggregate amount of its section 965(a) inclusions equal to the aggregate amount of its section 965(c) deductions is treated as income not exempt from tax solely for purposes of determining whether an adjustment is made to an accumulated adjustments account under section 1368(e)(1)(A) and § 1.1368–2(a)(2).

(iii) *Example.* The following example illustrates the application of this paragraph (f)(2).

*Example.* (i) *Facts.* USI, a United States citizen, owns all of the stock of S Corp, an S corporation, which owns all of the stock of FS, a foreign corporation. S Corp has a section 965(a) inclusion of $1,000 with respect to FS and has a $700 section 965(c) deduction.

(ii) *Analysis.* As a result of the application of paragraph (f)(2)(i)(A) of this section, solely for purposes of calculating basis under section 1367(a)(1) and § 1.1367–1(f), USI treats as a separately stated item of net income $300 (its pro rata share of the net of S Corp's $1,000 aggregate section 965(a) inclusion and S Corp's $700 aggregate section 965(c) deduction). Accordingly, USI's basis in S Corp is increased under section 1367(a)(1) by $300. As a result of the

application of paragraph (f)(2)(i)(B) of this section, an amount of S Corp's aggregate section 965(a) inclusion equal to its aggregate section 965(c) deduction, $700, is treated as tax exempt income solely for purposes of calculating basis under section 1367(a)(1)(A) and § 1.1367–1(f), and accordingly, USI's basis in S Corp is further increased by its pro rata share of such amount, $700. S Corp's accumulated adjustments account (AAA) is increased under section 1368(e)(1)(A) by the $1,000 section 965(a) inclusion taken into account and reduced by the $700 section 965(c) deduction taken into account. In addition, as a result of the application of paragraph (f)(2)(ii) of this section, S Corp's AAA is further increased by an amount of S Corp's aggregate section 965(a) inclusion equal to its aggregate section 965(c) deduction, $700, which is not treated as tax-exempt income for purposes of § 1.1368–2(a)(2).

(3) *Section 1411.* For purposes of section 1411 and § 1.1411–4(f)(6), a section 965(c) deduction is not treated as being properly allocable to any section 965(a) inclusion.

(4) *Section 4940.* For purposes of section 4940(c)(3)(A), a section 965(c) deduction is not treated as an ordinary and necessary expense paid or incurred for the production or collection of gross investment income.

(g) *Domestic pass-through entities.* For purposes of determining a domestic pass-through owner share, a section 965(c) deduction amount of a domestic pass-through entity must be allocated to a domestic pass-through owner in the same proportion as an aggregate section 965(a) inclusion amount of the domestic pass-through entity for a section 958(a) U.S. shareholder inclusion year is allocated to the domestic pass-through owner.

■ **Par. 8.** Section 1.965–4 is added to read as follows:

**§ 1.965–4 Disregard of certain transactions.**

(a) *Scope.* This section provides rules that disregard certain transactions for purposes of applying section 965 to a United States shareholder. Paragraph (b) of this section provides rules that disregard transactions undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder. Paragraph (c) of this section provides rules that disregard certain changes in method of accounting and entity classification elections that would otherwise change the amount of a section 965 element. Paragraph (d) of this section defines the term *section 965 element.* Paragraph (e) of this section provides rules of application concerning paragraphs (b) and (c) of this section. Paragraph (f) of this section provides rules that disregard certain transactions occurring between E&P measurement dates. Paragraph (g) of this section provides examples illustrating the application of this section.

(b) *Transactions undertaken with a principal purpose of changing the amount of a section 965 element*—(1) *General rule.* A transaction is disregarded for purposes of determining the amounts of all section 965 elements of a United States shareholder if each of the following conditions is satisfied with respect to any section 965 element of the United States shareholder—

(i) The transaction occurs, in whole or in part, on or after November 2, 2017 (the *specified date*);

(ii) The transaction is undertaken with a principal purpose of changing the amount of a section 965 element of the United States shareholder; and

(iii) The transaction would, without regard to this paragraph (b)(1), change the amount of the section 965 element of the United States shareholder.

(2) *Presumptions and exceptions for the application of the general rule*—(i) *Overview.* Under paragraphs (b)(2)(iii) through (v) of this section, certain transactions are presumed to be undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder for purposes of paragraph (b)(1) of this section. The presumptions described in paragraphs (b)(2)(iii) through (v) of this section may be rebutted only if facts and circumstances clearly establish that the transaction was not undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder. A taxpayer that takes the position that the presumption is rebutted must attach a statement to its return for its taxable year in which or with which the relevant taxable year of the relevant specified foreign corporation ends disclosing that it has rebutted the presumption. In the case of a transaction described in paragraph (b)(2)(iii) or (iv) of this section, if the presumption does not apply because the transaction occurs in the ordinary course of business, whether the transaction was undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder must be determined under all the facts and circumstances. Under paragraphs (b)(2)(iii) through (v) of this section, certain transactions are treated per se as being undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder and therefore such transactions are disregarded under paragraph (b)(1) of this section if the conditions of paragraphs (b)(1)(i) and (iii) of this section are satisfied. Further, under paragraph (b)(2)(iii) of this section, certain distributions are treated per se as not being undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder and therefore are not disregarded under paragraph (b)(1) of this section.

(ii) *Definitions*—(A) *Relatedness.* For purposes of paragraphs (b)(2)(iii) through (v) of this section, a person is treated as related to a United States shareholder if, either immediately before or immediately after the transaction (or series of related transactions), the person bears a relationship to the United States shareholder described in section 267(b) or section 707(b).

(B) *Transfer*—(*1*) *In general.* For purposes of paragraphs (b)(2)(iii) and (v) of this section, the term *transfer* includes any disposition of stock or property, including a sale or exchange, contribution, distribution, issuance, redemption, recapitalization, or loan of stock or property, and includes an indirect transfer of stock or property.

(*2*) *Indirect transfer.* For purposes of paragraph (b)(2)(ii)(B)*(1)* of this section, the term *indirect transfer* includes a transfer of property or stock owned by an entity through a transfer of an interest in such entity (or an interest in an entity that has a direct or indirect interest in such entity), and a transfer of property or stock to a person through a transfer of property or stock to a pass-through entity of which such person is a direct or indirect owner.

(iii) *Cash reduction transactions*—(A) *General rule.* For purposes of paragraph (b)(1) of this section, a cash reduction transaction is presumed to be undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder. For this purpose, the term *cash reduction transaction* means a transfer of cash, accounts receivable, or cash-equivalent assets by a specified foreign corporation to a United States shareholder of the specified foreign corporation or a person related to a United States shareholder of the specified foreign corporation, or an assumption by a specified foreign corporation of an account payable of a United States shareholder of the specified foreign corporation or a person related to a United States shareholder of the specified foreign corporation, if such transfer or assumption would, without regard to paragraph (b)(1) of this section, reduce the aggregate foreign cash position of the United States shareholder. The presumption described in this paragraph (b)(2)(iii) does not

apply to a cash reduction transaction that occurs in the ordinary course of business.

(B) *Per se rules for certain distributions.* Notwithstanding the presumption described in paragraph (b)(2)(iii)(A) of this section, except in the case of a specified distribution, a cash reduction transaction that is a distribution by a specified foreign corporation to a United States shareholder of the specified foreign corporation is treated per se as not being undertaken with a principal purpose of changing the amount of a section 965 element of the United States shareholder for purposes of paragraph (b)(1) of this section. A specified distribution is treated per se as being undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder for purposes of paragraph (b)(1) of this section. For purposes of this paragraph (b)(2)(iii)(B), the term *specified distribution* means a cash reduction transaction that is a distribution by a specified foreign corporation of a United States shareholder if and to the extent that, at the time of the distribution, there was a plan or intention for the distributee to transfer cash, accounts receivable, or cash-equivalent assets to any specified foreign corporation of the United States shareholder or the distribution is a non pro rata distribution to a foreign person that is related to the United States shareholder.

(iv) *E&P reduction transactions*—(A) *General rule.* For purposes of paragraph (b)(1) of this section, an E&P reduction transaction is presumed to be undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder. For purposes of this paragraph (b)(2)(iv), the term *E&P reduction transaction* means a transaction between a specified foreign corporation and any of a United States shareholder of the specified foreign corporation, another specified foreign corporation of a United States shareholder of the specified foreign corporation, or any person related to a United States shareholder of the specified foreign corporation, if the transaction would, without regard to paragraph (b)(1) of this section, reduce either the accumulated post-1986 deferred foreign income or the post-1986 undistributed earnings (as defined in section 902(c)(1)) of the specified foreign corporation or another specified foreign corporation of any United States shareholder of such specified foreign corporation. The presumption described in this paragraph (b)(2)(iv)(A) does not apply to an E&P reduction transaction that occurs in the ordinary course of business.

(B) *Per se rule for specified transactions.* A specified transaction is treated per se as being undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder for purposes of paragraph (b)(1) of this section. For purposes of the preceding sentence, the term *specified transaction* means an E&P reduction transaction that involves one or more of the following: A complete liquidation of a specified foreign corporation to which section 331 applies; a sale or other disposition of stock by a specified foreign corporation; or a distribution by a specified foreign corporation that reduces the earnings and profits of the specified foreign corporation pursuant to section 312(a)(3).

(v) *Pro rata share transactions*—(A) *General rule.* For purposes of paragraph (b)(1) of this section, a pro rata share transaction is presumed to be undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder. For this purpose, the term *pro rata share transaction* means either a pro rata share reduction transaction or an E&P deficit transaction.

(*1*) *Definition of pro rata share reduction transaction.* For purposes of this paragraph (b)(2)(v)(A), the term *pro rata share reduction transaction* means a transfer of the stock of a specified foreign corporation by either a United States shareholder of the specified foreign corporation or a person related to a United States shareholder of the specified foreign corporation (including by the specified foreign corporation itself) to a person related to the United States shareholder if the transfer would, without regard to paragraph (b)(1) of this section, reduce the United States shareholder's pro rata share of the section 965(a) earnings amount of the specified foreign corporation, reduce the United States shareholder's pro rata share of the cash position of the specified foreign corporation, or both.

(*2*) *Definition of E&P deficit transaction.* For purposes of this paragraph (b)(2)(v)(A), an *E&P deficit transaction* means a transfer to either a United States shareholder or a person related to the United States shareholder of the stock of an E&P deficit foreign corporation by a person related to the United States shareholder (including by the E&P deficit foreign corporation itself) if the transfer would, without regard to paragraph (b)(1) of this section, increase the United States shareholder's pro rata share of the specified E&P deficit of the E&P deficit foreign corporation.

(B) *Per se rule for internal group transactions.* An internal group transaction is treated per se as being undertaken with a principal purpose of changing the amount of a section 965 element of a United States shareholder for purposes of paragraph (b)(1) of this section. For purposes of the preceding sentence, the term *internal group transaction* means a pro rata share transaction if, immediately before or after the transfer, the transferor of the stock of the specified foreign corporation and the transferee of such stock are members of an affiliated group in which the United States shareholder is a member. For this purpose, the term *affiliated group* has the meaning set forth in section 1504(a), determined without regard to paragraphs (1) through (8) of section 1504(b), and the term *members of an affiliated group* means entities included in the same affiliated group. For purposes of identifying an affiliated group and the members of such group, each partner in a partnership, as determined without regard to this sentence, is treated as holding its proportionate share of the stock held by the partnership, as determined under the rules and principles of sections 701 through 777, and if one or more members of an affiliated group own, in the aggregate, at least 80 percent of the interests in a partnership's capital or profits, the partnership will be treated as a corporation that is a member of the affiliated group.

(C) *Example.* The following example illustrates the application of the rules in this paragraph (b)(2)(v).

*Example.* (i) *Facts.* FP, a foreign corporation, owns all of the stock of USP, a domestic corporation. USP owns all of the stock of FS, a foreign corporation. USP has a calendar year taxable year; FS's taxable year ends November 30. On January 2, 2018, USP transfers all of the stock of FS to FP in exchange for cash. On January 3, 2018, FS makes a distribution with respect to the stock transferred to FP. USP treats the transaction as a taxable sale of the FS stock and claims a dividends received deduction under section 245A with respect to its deemed dividend under section 1248(j) as a result of the sale. FS has post-1986 earnings and profits as of December 31, 2017, and no post-1986 earnings and profits that are attributable to income effectively connected with the conduct of a trade or business within the United States and subject to tax under chapter 1 or that, if distributed, would be excluded from the gross income of a United States shareholder under section 959.

(ii) *Analysis.* The transfer of the stock of FS is a pro rata share reduction transaction and thus a pro rata share transaction because such transfer is by USP, a United States

shareholder, to FP, a person related to USP, and the transfer would, without regard to the rule in paragraph (b)(1) of this section, reduce USP's pro rata share of the section 965(a) earnings amount of FS. Because USP and FP are also members of an affiliated group within the meaning of paragraph (b)(2)(v)(B) of this section, the transfer of the stock of FS is also an internal group transaction and is treated per se as being undertaken with a principal purpose of changing the amount of a section 965 element of USP. Accordingly, because the transfer occurs after the specified date and reduces USP's section 965(a) inclusion amount with respect to FS, the transfer is disregarded for purposes of determining any section 965 element of USP with the result that, among other things, USP's pro rata share of FS's section 965(a) earnings amount is determined as if USP owned (within the meaning of section 958(a)) 100% of the stock of FS on the last day of FS's inclusion year and no other person received a distribution with respect to such stock during such year. *See* section 951(a)(2)(A) and (B).

(c) *Disregard of certain changes in method of accounting and entity classification elections*—(1) *Changes in method of accounting.* Any change in method of accounting made for a taxable year of a specified foreign corporation that ends in 2017 or 2018 is disregarded for purposes of determining the amounts of all section 965 elements with respect to a United States shareholder if the change in method of accounting would, without regard to this paragraph (c)(1), change the amount of any section 965 element with respect to the United States shareholder, regardless of whether the change in method of accounting is made with a principal purpose of changing the amount of a section 965 element with respect to the United States shareholder. The rule described in the preceding sentence applies regardless of whether the change in method of accounting was made in accordance with the procedures described in Rev. Proc. 2015–13, 2015–5 I.R.B. 419 (or successor), and regardless of whether the change in method of accounting was properly made, but it does not apply to a change in method of accounting for which the original and/or duplicate copy of any Form 3115, ''Application for Change in Accounting Method,'' requesting the change was filed before the specified date (as defined in paragraph (b)(1) of this section).

(2) *Entity classification elections.* An election under § 301.7701–3 to change the classification of an entity that is filed on or after the specified date (as defined in paragraph (b)(1) of this section) is disregarded for purposes of determining the amounts of all section 965 elements of a United States shareholder if the election would, without regard to this paragraph (c)(2) of this section, change the amount of any section 965 element of the United States shareholder, regardless of whether the election is made with a principal purpose of changing the amount of a section 965 element of the United States shareholder. An election filed on or after the specified date is subject to the preceding sentence even if the election was filed with an effective date that is before the specified date.

(d) *Definition of a section 965 element.* For purposes of paragraphs (b) and (c) of this section, the term *section 965 element* means, with respect to a United States shareholder, any of the following amounts (collectively, *section 965 elements*)—

(1) The United States shareholder's section 965(a) inclusion amount with respect to a specified foreign corporation;

(2) The aggregate foreign cash position of the United States shareholder; or

(3) The amount of foreign income taxes of a specified foreign corporation deemed paid by the United States shareholder under section 960 as a result of a section 965(a) inclusion.

(e) *Rules for applying paragraphs (b) and (c) of this section*—(1) *Determination of whether there is a change in the amount of a section 965 element.* For purposes of paragraph (b) and (c) of this section, there is a change in the amount of a section 965 element of a United States shareholder as a result of a transaction, change in accounting method, or election to change an entity's classification, if, without regard to paragraph (b)(1), (c)(1), or (c)(2) of this section, the transaction, change in accounting method, or change in entity classification would—

(i) Reduce the amount described in paragraph (d)(1) of this section,

(ii) Reduce the amount described in paragraph (d)(2) of this section, but only if such amount is less than the United States shareholder's aggregate section 965(a) inclusion amount, or

(iii) Increase the amount described in paragraph (d)(3) of this section.

(2) *Treatment of domestic pass-through owners as United States shareholders.* For purposes of paragraph (b) and (c) of this section, if a domestic pass-through entity is a United States shareholder, then a domestic pass-through owner, with respect to the domestic pass-through entity, that is not otherwise a United States shareholder is treated as a United States shareholder.

(f) *Disregard of certain transactions occurring between E&P measurement dates*—(1) *Disregard of specified payments.* A specified payment made by a specified foreign corporation (*payor specified foreign corporation*) to another specified foreign corporation (*payee specified foreign corporation*) is disregarded for purposes of determining the post-1986 earnings and profits of each of the payor specified foreign corporation and the payee specified foreign corporation as of the E&P measurement date on December 31, 2017.

(2) *Definition of specified payment.* For purposes of paragraph (f)(1) of this section, the term *specified payment* means any amount paid or accrued by the payor specified foreign corporation, including a distribution by the payor specified foreign corporation with respect to its stock, if each of the following conditions are satisfied:

(i) Immediately before or immediately after the payment or accrual of the amount, the payor specified foreign corporation and the payee specified foreign corporation are related within the meaning of section 954(d)(3), substituting the term ''specified foreign corporation'' for ''controlled foreign corporation'' in each place that it appears;

(ii) The payor specified foreign corporation and the payee specified foreign corporation do not have the same tentative E&P measurement date;

(iii) The payment or accrual of the amount occurs after November 2, 2017, and on or before December 31, 2017; and

(iv) The payment or accrual of the amount would, without regard to the application of paragraph (f)(1) of this section, reduce the post-1986 earnings and profits of the payor specified foreign corporation as of the E&P measurement date on December 31, 2017.

(3) *Definition of tentative E&P measurement date.* For purposes of paragraph (f)(2) of this section, the term *tentative E&P measurement date* means—

(i) With respect to a specified foreign corporation that is not described in paragraph (f)(3)(ii) of this section, the E&P measurement date of the specified foreign corporation that, without regard to the application of paragraph (f)(1) of this section, would result in the ''greater of'' amount of accumulated post-1986 deferred foreign income described in section 965(a) and § 1.965–1(f)(36); and

(ii) With respect to a specified foreign corporation that, without regard to the application of paragraph (f)(1) of this section, would be an E&P deficit foreign corporation, the E&P measurement date as of November 2, 2017.

(4) *Examples.* The following examples illustrate the application of the rules in this paragraph (f).

*Example 1. Deductible payment between wholly owned specified foreign corporations is a specified payment.* (i) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1, a foreign corporation, which owns all of the stock of CFC2, also a foreign corporation. USP, CFC1, and CFC2 have calendar year taxable years. On November 2, 2017, each of CFC1 and CFC2 has post-1986 earnings and profits of 100u. Neither CFC1 nor CFC2 has post-1986 earnings and profits that are attributable to income of the specified foreign corporation that is effectively connected with the conduct of a trade or business within the United States and subject to tax under chapter 1 or that, if distributed, would be excluded from the gross income of a United States shareholder under section 959 or from the gross income of another shareholder if such shareholder were a United States shareholder; therefore, no adjustment is made under section 965(d)(2) or § 1.965–1(f)(7) and each of CFC1's and CFC2's accumulated post-1986 deferred foreign income is equal to such corporation's post-1986 earnings and profits. On November 3, 2017, CFC2 makes a deductible payment of 10u to CFC1. The payment does not constitute subpart F income. CFC1 and CFC2 have no other items of income or deduction.

(ii) *Analysis.* (A) *Determination of tentative E&P measurement date.* Without regard to paragraph (f)(1) of this section, as of the E&P measurement date on December 31, 2017, CFC1 has post-1986 earnings and profits of 110u (100u plus 10u income from the payment from CFC2), and CFC2 has post-1986 earnings and profits of 90u (100u minus 10u deduction from the payment to CFC1). Therefore, the tentative E&P measurement date of CFC1 is December 31, 2017 (110u), and the tentative E&P measurement date of CFC2 is November 2, 2017 (100u).

(B) *Application of the requirements for a specified payment.* The payment from CFC2 to CFC1 is a specified payment because (A) CFC1 and CFC2 are related specified foreign corporations; (B) CFC1 and CFC2 do not have the same tentative measurement date; (C) the payment occurs after November 2, 2017, and on or before December 31, 2017; and (D) the payment would, without regard to the application of the rule in paragraph (f)(1) of this section, reduce the post-1986 earnings and profits of CFC2 as of the E&P measurement date on December 31, 2017. Under paragraph (f)(1) of this section, the payment is disregarded and CFC1 and CFC2 each have post-1986 earnings and profits of 100u as of December 31, 2017. Accordingly, the section 965(a) earnings amount of each of CFC1 and CFC2 is 100u.

*Example 2. Distribution is a specified payment.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 1* of this paragraph (f)(4), except instead of a deductible payment to CFC1, CFC2 makes a 10u distribution on November 3, 2017, that, without regard to paragraph (f)(1) of this section would reduce the post-1986 earnings and profits of CFC2 as of the E&P measurement date on December 31, 2017, and increase the post-1986 earnings and profits of CFC1 as of the E&P measurement date on December 31, 2017, by 10u.

(ii) *Analysis.* (A) *Determination of tentative E&P measurement date.* The analysis is the same as in paragraph (ii)(A) of *Example 1* of this paragraph (f)(4).

(B) *Application of the requirements for a specified payment.* The distribution is a specified payment because (A) CFC1 and CFC2 are related specified foreign corporations; (B) CFC1 and CFC2 do not have the same tentative measurement date; (C) the distribution occurs after November 2, 2017, and on or before December 31, 2017; and (D) the distribution would, without regard to the application of the rule in paragraph (f)(1) of this section, reduce the post-1986 earnings and profits of CFC2 as of the E&P measurement date on December 31, 2017. Under paragraph (f)(1) of this section, the distribution is disregarded with the result that CFC1 and CFC2 each have post-1986 earnings and profits of 100u as of the E&P measurement date on December 31, 2017 and a section 965(a) earnings amount of 100u.

*Example 3. Deductible payment between related (but not wholly owned) specified foreign corporations is a specified payment.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 1* of this paragraph (f)(4), except that CFC1 owns only 51% of the only class of stock of CFC2, the remainder of which is owned by USI, a United States citizen unrelated to USP, CFC1, and CFC2.

(ii) *Analysis.* The analysis is the same as in paragraph (ii) of *Example 1* of this paragraph (f)(4); thus the payment is disregarded with the result that CFC1 and CFC2 each have post-1986 earnings and profits of 100u as of the E&P measurement date on December 31, 2017, and a section 965(a) earnings amount of 100u.

*Example 4. Deductible payment between unrelated specified foreign corporations is not a specified payment.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 1* of this paragraph (f)(4), except that CFC1 owns only 50% of the only class of stock of CFC2, the remainder of which is owned by USI, a United States citizen unrelated to USP, CFC1, and CFC2.

(ii) *Analysis.* Paragraph (f)(1) of this section does not apply because CFC1 and CFC2 are not related. Thus, the payment is taken into account with the result that CFC1 has post-1986 earnings and profits of 110u as of the E&P measurement date on December 31, 2017, and a section 965(a) earnings amount of 110u.

*Example 5. Deductible payment and income accrued from unrelated persons are not specified payments.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 1* of this paragraph (f)(4), except that CFC2 does not make a deductible payment to CFC1, and, between E&P measurement dates, CFC2 accrues gross income of 20u from a person that is not related to CFC2, and CFC1 incurs a deductible expense of 20u to a person that is not related to CFC1.

(ii) *Analysis.* Paragraph (f)(1) of this section does not apply because neither the deductible expense of CFC1 nor the income accrual by CFC2 are attributable to a specified payment.

*Example 6. Deductible payment and income accrued with respect to unrelated persons are not specified payments; deductible payment between wholly specified foreign corporations is a specified payment.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 5* of this paragraph (f)(4), except that CFC2 also makes a deductible payment of 10u to CFC1 on November 3, 2017.

(ii) *Analysis.* (A) *Determination of tentative E&P measurement date.* Without regard to paragraph (f)(1) of this section, as of the E&P measurement date on December 31, 2017, CFC1 has post-1986 earnings and profits of 90u (100u minus 20u deductible expense plus 10u income from the payment from CFC2), and CFC2 has post-1986 earnings and profits of 110u (100u plus 20u gross income minus 10u deduction from the deductible payment to CFC1). Therefore, the tentative E&P measurement date of CFC1 is November 2, 2017 (100u) and the tentative E&P measurement date of CFC2 is December 31, 2017 (110u).

(B) *Application of the requirements for a specified payment.* The deductible payment is a specified payment because (A) CFC1 and CFC2 are related specified foreign corporations; (B) CFC1 and CFC2 do not have the same tentative measurement date; (C) the payment occurs after November 2, 2017, and on or before December 31, 2017; and (D) the deductible payment would, without regard to the application of the rule in paragraph (f)(1) of this section, reduce the post-1986 earnings and profits of CFC2 as of the E&P measurement date on December 31, 2017. Accordingly, under paragraph (f)(1) of this section, the deductible payment is disregarded with the result that CFC1 and CFC2 have 80u and 120u of post-1986 earnings and profits as of the E&P measurement date on December 31, 2017, respectively. Accordingly, CFC1 and CFC2 have section 965(a) earnings amounts of 100u and 120u, respectively.

■ **Par. 9.** Section 1.965–5 is added to read as follows:

**§ 1.965–5 Allowance of a credit or deduction for foreign income taxes.**

(a) *Scope.* This section provides rules for the allowance of a credit or deduction for foreign income taxes in connection with the application of section 965. Paragraph (b) of this section provides rules under section 965(g) for the allowance of a credit or deduction for foreign income taxes paid or accrued. Paragraph (c) of this section provides rules for the allowance of a credit or deduction for foreign income taxes treated as paid or accrued in connection with the application of section 965. Paragraph (d) of this section defines the term ''applicable percentage.''

(b) *Rules for foreign income taxes paid or accrued.* Neither a deduction (including under section 164) nor a credit under section 901 is allowed for the applicable percentage of any foreign

income taxes paid or accrued with respect to any amount for which a section 965(c) deduction is allowed for a section 958(a) U.S. shareholder inclusion year. Neither a deduction (including under section 164) nor a credit under section 901 is allowed for the applicable percentage of any foreign income taxes attributable to a distribution of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits. Accordingly, no deduction or credit is allowed for the applicable percentage of any withholding taxes imposed on a United States shareholder by the jurisdiction of residence of the distributing foreign corporation with respect to a distribution of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits. Similarly, no deduction or credit is allowed for the applicable percentage of net basis taxes imposed on a United States citizen by the citizen's jurisdiction of residence upon receipt of a distribution of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits.

(c) *Rules for foreign income taxes treated as paid or accrued*—(1) *Disallowed credit*—(i) *In general.* A credit under section 901 is not allowed for the applicable percentage of any foreign income taxes treated as paid or accrued with respect to any amount for which a section 965(c) deduction is allowed for a section 958(a) U.S. shareholder inclusion year. For purposes of the preceding sentence, taxes treated as paid or accrued include foreign income taxes deemed paid under section 960(a)(1) with respect to a section 965(a) inclusion, foreign income taxes deemed paid under section 960(a)(3) with respect to distributions of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits, foreign income taxes allocated to an entity under § 1.901–2(f)(4), and a distributive share of foreign income taxes paid or accrued by a partnership.

(ii) *Foreign income taxes deemed paid under section 960(a)(3) (as in effect on December 21, 2017).* Foreign income taxes deemed paid by a domestic corporation under section 960(a)(3) with respect to a distribution of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits include only the foreign income taxes paid or accrued by an upper-tier foreign corporation with respect to a distribution of section 965(a) previously taxed earnings and profits or section 965(b) previously taxed earnings and profits from a lower-tier foreign corporation. No credit is allowed under section 960(a)(3) or any other section for foreign income taxes that would have been deemed paid under section 960(a)(1) with respect to the portion of a section 965(a) earnings amount that is reduced under § 1.965–1(b)(2) or § 1.965–8(b).

(iii) [Reserved]

(2) *Disallowed deduction.* No deduction (including under section 164) is allowed for the applicable percentage of any foreign income taxes treated as paid or accrued with respect to any amount for which a section 965(c) deduction is allowed. Such taxes include foreign income taxes allocated to an entity under § 1.901–2(f)(4) and a distributive share of foreign income taxes paid or accrued by a partnership.

(3) *Coordination with section 78*—(i) *In general.* With respect to foreign income taxes deemed paid by a domestic corporation with respect to its section 965(a) inclusion amount for a section 958(a) U.S. shareholder inclusion year, section 78 shall apply only to so much of such taxes as bears the same proportion to the amount of such taxes as—

(A) The excess of—

*(1)* The section 965(a) inclusion amount for a section 958(a) U.S. shareholder inclusion year, over

*(2)* The section 965(c) deduction amount allowable with respect to such section 965(a) inclusion amount, bears to

(B) Such section 965(a) inclusion amount.

(ii) *Domestic corporation that is a domestic pass-through owner.* With respect to foreign income taxes deemed paid by a domestic corporation attributable to such corporation's domestic pass-through owner share of a section 965(a) inclusion amount of a domestic pass-through entity, section 78 shall apply only to so much of such taxes as bears the same proportion to the amount of such taxes as the proportion determined under paragraph (c)(3)(i) of this section as applied to the domestic pass-through entity's section 965(a) inclusion amount for a section 958(a) U.S. shareholder inclusion year.

(d) *Applicable percentage*—(1) *In general.* For purposes of this section, the term *applicable percentage* means, with respect to a section 958(a) U.S. shareholder and a section 958(a) U.S. shareholder inclusion year, the amount (expressed as a percentage) equal to the sum of—

(i) 0.771 multiplied by the ratio of—

(A) The section 958(a) U.S. shareholder's 8 percent rate amount for the section 958(a) U.S. shareholder inclusion year, divided by

(B) The sum of the section 958(a) U.S. shareholder's 8 percent rate amount for the section 958(a) U.S. shareholder inclusion year plus the section 958(a) U.S. shareholder's 15.5 percent rate amount for the section 958(a) U.S. shareholder inclusion year; plus

(ii) 0.557 multiplied by the ratio of—

(A) The section 958(a) U.S. shareholder's 15.5 percent rate amount for the section 958(a) U.S. shareholder inclusion year, divided by

(B) The amount described in paragraph (d)(1)(i)(B) of this section.

(2) *Applicable percentage for domestic pass-through owners.* In the case of a domestic pass-through owner that has a domestic pass-through owner share of a domestic pass-through entity's section 965(a) inclusion amount, the domestic pass-through owner's applicable percentage that is applied to foreign income taxes attributable to such section 965(a) inclusion amount is equal to the applicable percentage determined under paragraph (d)(1) of this section with respect to the domestic pass-through entity that is the section 958(a) U.S. shareholder.

■ **Par. 10.** Section 1.965–6 is added to read as follows:

**§ 1.965–6 Computation of foreign income taxes deemed paid and allocation and apportionment of deductions.**

(a) *Scope.* This section provides rules for the computation of foreign income taxes deemed paid and the allocation and apportionment of deductions. Paragraphs (b) and (c) of this section provide the general rules for the computation of foreign income taxes deemed paid under sections 902 and 960. Paragraph (d) of this section provides rules for allocation and apportionment of expenses.

(b) *Computation of foreign incomes taxes deemed paid.* For purposes of determining foreign income taxes deemed paid under section 960(a)(1) with respect to a section 965(a) inclusion attributable to a deferred foreign income corporation, section 902 applies as if the section 965(a) inclusion, translated (if necessary) into the functional currency of the deferred foreign income corporation using the spot rate on December 31, 2017, were a dividend paid by the deferred foreign income corporation.

(c) *Section 902 fraction*—(1) *In general.* The term *section 902 fraction* means, with respect to a foreign corporation that is either a deferred foreign income corporation or an E&P

deficit foreign corporation, the fraction that is—

(i) The dividend paid by, or the inclusion under section 951(a)(1) (including a section 965(a) inclusion) with respect to, the foreign corporation, as applicable (the *numerator*), divided by

(ii) The foreign corporation's post-1986 undistributed earnings (the *denominator*). *See* section 902(a).

(2) *Dividend or inclusion in excess of post-1986 undistributed earnings.* When the denominator of the section 902 fraction is positive but less than the numerator of such fraction, the section 902 fraction is one. When the denominator of the section 902 fraction is zero or less than zero, the section 902 fraction is zero and no foreign taxes are deemed paid.

(3) *Treatment of adjustment under section 965(b)(4)(B).* For purposes of section 902(c)(1), the post-1986 undistributed earnings of an E&P deficit foreign corporation are increased under section 965(b)(4)(B) and § 1.965–2(d)(2)(i)(A) as of the first day of the foreign corporation's first taxable year following the E&P deficit foreign corporation's last taxable year that begins before January 1, 2018.

(d) *Allocation and apportionment of deductions.* For purposes of allocating and apportioning expenses, a section 965(c) deduction does not result in any gross income, including a section 965(a) inclusion, being treated as exempt, excluded, or eliminated income within the meaning of section 864(e)(3) or § 1.861–8T(d). Similarly, a section 965(c) deduction does not result in the treatment of stock as an exempt asset within the meaning of section 864(e)(3) or § 1.861–8T(d). In addition, consistent with the general inapplicability of § 1.861–8T(d)(2) to earnings and profits described in section 959(c)(1) or 959(c)(2), neither section 965(a) previously taxed earnings and profits nor section 965(b) previously taxed earnings and profits are treated as giving rise to gross income that is exempt, excluded, or eliminated income. Similarly, the asset that gives rise to a section 965(a) inclusion, section 965(a) previously taxed earnings and profits, or section 965(b) previously taxed earnings and profits is not treated as a tax-exempt asset.

■ **Par. 11.** Section 1.965–7 is added to read as follows:

**§ 1.965–7 Elections, payment, and other special rules.**

(a) *Scope.* This section provides rules regarding certain elections and payments. Paragraph (b) of this section provides rules regarding the section 965(h) election. Paragraph (c) of this section provides rules regarding the section 965(i) election. Paragraph (d) of this section provides rules regarding the section 965(m) election and a special rule for real estate investment trusts. Paragraph (e) of this section provides rules regarding the section 965(n) election. Paragraph (f) of this section provides rules regarding the election to use the alternative method for calculating post-1986 earnings and profits. Paragraph (g) of this section provides definitions that apply for purposes of this section. For additional definitions that apply for purposes of the section 965 regulations, see § 1.965–1(f).

(b) *Section 965(h) election*—(1) *In general.* Any person with a section 965(h) net tax liability (that is, a section 958(a) U.S. shareholder or a domestic pass-through owner with respect to a domestic pass-through entity that is a section 958(a) U.S. shareholder, but not a domestic pass-through entity itself) may elect under section 965(h) and this paragraph (b) to pay its section 965(h) net tax liability in eight installments. This election may be revoked only by paying the full amount of the remaining unpaid section 965(h) net tax liability.

(i) *Amount of installments.* Except as provided in paragraph (b)(3) of this section, if a person makes a section 965(h) election, the amounts of the installments are—

(A) Eight percent of the section 965(h) net tax liability in the case of each of the first five installments;

(B) Fifteen percent of the section 965(h) net tax liability in the case of the sixth installment;

(C) Twenty percent of the section 965(h) net tax liability in the case of the seventh installment; and

(D) Twenty-five percent of the section 965(h) net tax liability in the case of the eighth installment.

(ii) *Increased installments due to a deficiency or a timely filed or amended return*—(A) *In general.* If a person makes a section 965(h) election, except as provided in paragraph (b)(1)(ii)(C) of this section, any deficiency or additional liability will be prorated to the installments described under paragraph (b)(1)(i) of this section if any of the following occur:

*(1)* A deficiency is assessed with respect to the person's section 965(h) net tax liability;

*(2)* The person files a return by the due date (taking into account extensions, if any) increasing the amount of its section 965(h) net tax liability beyond that taken into account in paying the first installment described under paragraph (b)(1)(i) of this section; or

*(3)* The person files an amended return that reflects an increase in the amount of its section 965(h) net tax liability.

(B) *Timing.* If the due date for the payment of an installment to which the deficiency or additional liability is prorated has passed, the amount prorated to such installment must be paid on notice and demand by the Secretary. If the due date for the payment of an installment to which the deficiency or additional liability is prorated has not passed, then such amount will be due at the same time as, and as part of, the relevant installment.

(C) *Exception for negligence, intentional disregard, or fraud.* If a deficiency or additional liability is due to negligence, intentional disregard of rules and regulations, or fraud with intent to evade tax, the proration rule of this paragraph (b)(1)(ii) will not apply and the deficiency or additional liability (as well as any applicable interest and penalties) must be paid on notice and demand by the Secretary or, in the case of an additional liability reported on a return increasing the amount of the section 965(h) net tax liability after payment of the first installment or on an amended return, with the filing of the return.

(iii) *Due date of installments*—(A) *In general.* If a person makes a section 965(h) election, the first installment payment is due on the due date (without regard to extensions) for the return for the relevant taxable year. For purposes of this paragraph (b), the term *relevant taxable year* means, in the case in which the person is a section 958(a) U.S. shareholder, the section 958(a) U.S. shareholder inclusion year, or, in the case in which the person is a domestic pass-through owner, the taxable year in which the person has the section 965(a) inclusion to which the section 965(h) net tax liability is attributable. Each succeeding installment payment is due on the due date (without regard to extensions) for the return for the taxable year following the taxable year with respect to which the previous installment payment was made.

(B) *Extension for specified individuals.* If a person is a specified individual with respect to a taxable year within which an installment payment is due pursuant to paragraph (b)(1)(iii)(A) of this section, then, for purposes of determining the due date of an installment payment under paragraph (b)(1)(iii)(A) of this section, the due date of the return (without regard to extensions) due within the taxable year will be treated as the fifteenth day of the

sixth month following the close of the prior taxable year. This paragraph (b)(1)(iii)(B) is applicable regardless of whether the person is a specified individual with respect to the relevant taxable year.

(2) *Manner of making election*—(i) *Eligibility.* Any person with a section 965(h) net tax liability may make the section 965(h) election, provided that, with respect to the person, none of the acceleration events described in paragraph (b)(3)(ii) of this section have occurred before the election is made. Notwithstanding the preceding sentence, a person that would be eligible to make the section 965(h) election but for the occurrence of an event described in paragraph (b)(3)(ii) of this section may make the section 965(h) election if the exception described in paragraph (b)(3)(iii)(A) of this section applies.

(ii) *Timing.* A section 965(h) election must be made no later than the due date (taking into account extensions, if any, or any additional time that would have been granted if the person had made an extension request) for the return for the relevant taxable year. Relief is not available under § 301.9100–2 or 301.9100–3 to file a late election.

(iii) *Election statement.* Except as otherwise provided in publications, forms, instructions, or other guidance, to make a section 965(h) election, a person must attach a statement, signed under penalties of perjury, to its return for the relevant taxable year. The statement must include the person's name, taxpayer identification number, total net tax liability under section 965, section 965(h) net tax liability, section 965(i) net tax liability with respect to which a section 965(i) election is effective (if applicable), and the anticipated amounts of each installment described under paragraph (b)(1)(i) of this section. The statement must be filed in the manner prescribed in publications, forms, instructions, or other guidance.

(3) *Acceleration of payment*—(i) *Acceleration.* Notwithstanding paragraph (b)(1)(i) of this section, if a person makes a section 965(h) election, and an acceleration event described in paragraph (b)(3)(ii) of this section subsequently occurs, then, except as provided in paragraph (b)(3)(iii) of this section, the unpaid portion of the remaining installments will be due on the date of the acceleration event (or in the case of a title 11 or similar case, the day before the petition is filed).

(ii) *Acceleration events.* The following events are acceleration events for purposes of paragraph (b)(3)(i) of this section with respect to a person that has made a section 965(h) election:

(A) An addition to tax is assessed for the failure to timely pay an installment described in paragraph (b)(1)(i) of this section;

(B) A liquidation, sale, exchange, or other disposition of substantially all of the assets of the person (including in a title 11 or similar case, or, in the case of an individual, by reason of death);

(C) In the case of a person that is not an individual, a cessation of business by the person;

(D) Any event that results in the person no longer being a United States person, including a resident alien (as defined in section 7701(b)(1)(A)) becoming a nonresident alien (as defined in section 7701(b)(1)(B));

(E) In the case of a person that was not a member of any consolidated group, the person becoming a member of a consolidated group;

(F) In the case of a consolidated group, the group ceasing to exist (including by reason of the acquisition of a consolidated group within the meaning of § 1.1502–13(j)(5)) or the group otherwise discontinuing in the filing of a consolidated return; or

(G) A determination by the Commissioner described in the second sentence of paragraph (b)(3)(iii)(C)(*2*) of this section.

(iii) *Eligible section 965(h) transferee exception*—(A) *In general.* Paragraph (b)(3)(i) of this section does not apply (such that the unpaid portion of all remaining installments will not be due as of the date of the acceleration event) to a person with respect to which an acceleration event occurs if the requirements described in paragraphs (b)(3)(iii)(A)(*1*) and (*2*) of this section are satisfied. A person with respect to which an acceleration event described in this paragraph (b)(3)(iii)(A) occurs is referred to as an *eligible section 965(h) transferor.*

(*1*) *Requirement to have a covered acceleration event.* The acceleration event satisfies the requirements of this paragraph (b)(3)(iii)(A)(*1*) if it is described in—

(*i*) Paragraph (b)(3)(ii)(B) of this section and the acceleration event is a qualifying consolidated group member transaction within the meaning of paragraph (b)(3)(iii)(E) of this section;

(*ii*) Paragraph (b)(3)(ii)(B) of this section (other than, in the case of an individual, an acceleration event caused by reason of death) in a transaction that is not a qualifying consolidated group member transaction;

(*iii*) Paragraph (b)(3)(ii)(E) of this section; or

(*iv*) Paragraph (b)(3)(ii)(F) of this section, and the acceleration event results from the acquisition of a consolidated group within the meaning of § 1.1502–13(j)(5) and the acquired consolidated group members join a different consolidated group as of the day following the acquisition.

(*2*) *Requirement to enter into a transfer agreement.* An eligible section 965(h) transferor and an eligible section 965(h) transferee (as defined in paragraph (b)(3)(iii)(B) of this section) must enter into an agreement with the Commissioner that satisfies the requirements of paragraph (b)(3)(iii)(B) of this section.

(B) *Transfer agreement*—(*1*) *Eligibility.* A transfer agreement that satisfies the requirements of this paragraph (b)(3)(iii)(B) must be entered into by an eligible section 965(h) transferor and an eligible section 965(h) transferee. For this purpose, the term *eligible section 965(h) transferee* refers to a single United States person that is not a domestic pass-through entity and that—

(*i*) With respect to an acceleration event described in paragraph (b)(3)(iii)(A)*(1)(i)* of this section, is a departing member (as defined in paragraph (b)(3)(iii)(E)*(1)(i)* of this section) or its qualified successor (as defined in paragraph (b)(3)(iii)(E)*(2)* of this section);

(*ii*) With respect to an acceleration event described in paragraph (b)(3)(iii)(A)(*1*)(*ii*) of this section, acquires substantially all of the assets of an eligible section 965(h) transferor;

(*iii*) With respect to an acceleration event described in paragraph (b)(3)(iii)(A)(*1*)(*iii*) of this section, is the agent (within the meaning of § 1.1502–77) of the consolidated group that the eligible section 965(h) transferor joins; or

(*iv*) With respect to an acceleration event described in paragraph (b)(3)(iii)(A)(*1*)(*iv*) of this section, is the agent (within the meaning of § 1.1502–77) of the surviving consolidated group.

(*2*) *Filing requirements*—(*i*) *In general.* A transfer agreement must be timely filed. Except as provided in paragraph (b)(3)(iii)(B)(*2*)(*ii*) of this section, a transfer agreement is considered timely filed only if the transfer agreement is filed within 30 days of the date that the acceleration event occurs. The transfer agreement must be filed in accordance with the rules provided in forms, instructions, or other guidance. In addition, a duplicate copy of the transfer agreement must be attached to the returns of both the eligible section 965(h) transferee and the eligible section 965(h) transferor for the taxable year

during which the acceleration event occurs filed by the due date for such returns (taking into account extensions, if any). Relief is not available under § 301.9100–2 or 301.9100–3 to file a transfer agreement late.

(*ii*) *Transition rule.* If an acceleration event occurs before September 10, 2018, the transfer agreement must be filed by October 9, 2018 in order to be considered timely filed.

(*3*) *Signature requirement.* The transfer agreement that is filed within 30 days of the acceleration event must be signed under penalties of perjury by a person who is authorized to sign a return on behalf of the eligible section 965(h) transferor and a person who is authorized to sign a return on behalf of the eligible section 965(h) transferee.

(*4*) *Terms of agreement.* A transfer agreement under this paragraph (b)(3)(iii)(B) must be entitled ''Transfer Agreement Under Section 965(h)(3)'' and must contain the following information and representations—

(*i*) A statement that the document constitutes an agreement by the eligible section 965(h) transferee to assume the liability of the eligible section 965(h) transferor for any unpaid installment payments of the eligible section 965(h) transferor under section 965(h);

(*ii*) A statement that the eligible section 965(h) transferee (and, if the eligible section 965(h) transferor continues in existence immediately after the acceleration event, the eligible section 965(h) transferor) agrees to comply with all of the conditions and requirements of section 965(h) and paragraph (b) of this section, as well as any other applicable requirements in the section 965 regulations;

(*iii*) The name, address, and taxpayer identification number of the eligible section 965(h) transferor and the eligible section 965(h) transferee;

(*iv*) The amount of the eligible section 965(h) transferor's section 965(h) net tax liability remaining unpaid, as determined by the eligible section 965(h) transferor, which is subject to adjustment by the Commissioner;

(*v*) A copy of the eligible section 965(h) transferor's most recent Form 965–A or Form 965–B, as applicable;

(*vi*) A detailed description of the acceleration event that led to the transfer agreement;

(*vii*) A representation that the eligible section 965(h) transferee is able to make the remaining payments required under section 965(h) and paragraph (b) of this section with respect to the section 965(h) net tax liability being assumed; and

(*viii*) If the eligible section 965(h) transferor continues to exist immediately after the acceleration event, an acknowledgement that the eligible section 965(h) transferor and any successor to the eligible section 965(h) transferor will remain jointly and severally liable for any unpaid installment payments of the eligible section 965(h) transferor under section 965(h), including, if applicable, under § 1.1502–6.

(*5*) *Consolidated groups.* For purposes of this paragraph (b)(3)(iii)(B), in the case of a consolidated group, the terms ''eligible section 965(h) transferor'' and ''eligible section 965(h) transferee'' each refer to a consolidated group that is a party to a covered acceleration event described in paragraph (b)(3)(iii)(A)(*1*) of this section. In such a case, any transfer agreement under this paragraph (b)(3)(iii)(B) must be entered into by the agent (as defined in § 1.1502–77) of the relevant consolidated group.

(C) *Consent of Commissioner*—(*1*) *In general.* Except as otherwise provided in publications, instructions, forms, or other guidance, if an eligible section 965(h) transferor and an eligible section 965(h) transferee file a transfer agreement in accordance with the provisions of paragraph (b)(3)(iii)(B) of this section, the eligible section 965(h) transferor and the eligible section 965(h) transferee will be considered to have entered into an agreement described in paragraph (b)(3)(iii)(A)(*2*) of this section with the Commissioner for purposes of section 965(h)(3) and paragraph (b)(3)(iii) of this section. If the Commissioner determines that additional information is necessary (for example, additional information regarding the ability of the eligible section 965(h) transferee to fully pay the remaining section 965(h) net tax liability), the eligible section 965(h) transferee must provide such information upon request.

(*2*) *Material misrepresentations and omissions.* If the Commissioner determines that an agreement filed by an eligible section 965(h) transferor and an eligible section 965(h) transferee contains a material misrepresentation or material omission, then the Commissioner may reject the transfer agreement (effective as of the date of the related acceleration event). In the alternative, on the date that the Commissioner determines that the transfer agreement includes a material misrepresentation or material omission, the Commissioner may determine that an acceleration event has occurred with respect to the eligible section 965(h) transferee as of the date of the determination, such that any unpaid installment payments of the eligible section 965(h) transferor that were assumed by the eligible section 965(h) transferee become due on the date of the determination.

(D) *Effect of assumption*—(*1*) *In general.* If the exception in this paragraph (b)(3)(iii) applies with respect to an eligible section 965(h) transferor and an eligible section 965(h) transferee, the eligible section 965(h) transferee assumes all of the outstanding obligations and responsibilities of the eligible section 965(h) transferor with respect to the section 965(h) net tax liability as though the eligible section 965(h) transferee had included the section 965(a) inclusion in income. Accordingly, the eligible section 965(h) transferee is responsible for making payments and reporting with respect to any unpaid installment payments. In addition, for example, if an acceleration event described in paragraph (b)(3)(ii) of this section occurs with respect to an eligible section 965(h) transferee, any unpaid installment payments of the eligible section 965(h) transferor that were assumed by the eligible section 965(h) transferee will become due on the date of such event, subject to any applicable exception in paragraph (b)(3)(iii) of this section.

(*2*) *Eligible section 965(h) transferor liability.* An eligible section 965(h) transferor (or a successor) remains jointly and severally liable for any unpaid installment payments of the eligible section 965(h) transferor that were assumed by the eligible section 965(h) transferee, as well as any penalties, additions to tax, or other additional amounts attributable to such net tax liability.

(E) *Qualifying consolidated group member transaction*—(*1*) *Definition of qualifying consolidated group member transaction.* For purposes of this paragraph (b)(3), the term *qualifying consolidated group member transaction* means a transaction in which—

(*i*) A member of a consolidated group (the *departing member*) ceases to be a member of the consolidated group (including by reason of the distribution, sale, or exchange of the departing member's stock);

(*ii*) The transaction results in the consolidated group (which is treated as a single person for this purpose under § 1.965–8(e)(1)) being treated as transferring substantially all of its assets for purposes of paragraph (b)(3)(ii)(B) of this section; and

(*iii*) The departing member either continues to exist immediately after the transaction or has a qualified successor.

(*2*) *Definition of qualified successor.* For purposes of this paragraph (b)(3), the term *qualified successor* means, with respect to a departing member

described in this paragraph (b)(3)(iii)(E), another domestic corporation (or consolidated group) that acquires substantially all of the assets of the departing member (including in a transaction described in section 381(a)(2)).

(*3*) *Departure of multiple members of a consolidated group.* Multiple members that deconsolidate from the same consolidated group as a result of a single transaction are treated as a single departing member to the extent that, immediately after the transaction, they become members of the same (second) consolidated group, which would be treated as a single person under § 1.965–8(e)(1).

(c) *Section 965(i) election*—(1) *In general.* Each shareholder, other than a domestic pass-through entity, of an S corporation that is a United States shareholder of a deferred foreign income corporation may elect under section 965(i) and this paragraph (c) to defer the payment of the shareholder's section 965(i) net tax liability with respect to the S corporation until the shareholder's taxable year that includes a triggering event described in paragraph (c)(3) of this section. This election may be revoked only by paying the full amount of the unpaid section 965(i) net tax liability.

(2) *Manner of making election*—(i) *Eligibility.* Each shareholder with a section 965(i) net tax liability with respect to an S corporation may make the section 965(i) election with respect to such S corporation, provided that, with respect to the shareholder, none of the triggering events described in paragraph (c)(3)(ii) of this section have occurred before the election is made. Notwithstanding the preceding sentence, a shareholder that would be eligible to make the section 965(i) election but for the occurrence of an event described in paragraph (c)(3)(ii) of this section may make the section 965(i) election if an exception described in paragraph (c)(3)(ii) of this section applies.

(ii) *Timing.* A section 965(i) election must be made no later than the due date (taking into account extensions, if any) for the shareholder's return for each taxable year that includes the last day of the taxable year of the S corporation in which the S corporation has a section 965(a) inclusion to which the shareholder's section 965(i) net tax liability is attributable. Relief is not available under § 301.9100–2 or 301.9100–3 to make a late election.

(iii) *Election statement.* Except as otherwise provided in publications, forms, instructions, or other guidance, to make a section 965(i) election, a shareholder must attach a statement, signed under penalties of perjury, to its return for the taxable year that includes the last day of a taxable year of the S corporation in which the S corporation has a section 965(a) inclusion to which the shareholder's section 965(i) net tax liability is attributable. The statement must include the shareholder's name, taxpayer identification number, the name and taxpayer identification number of the S corporation with respect to which the election is made, the amount described in paragraph (g)(10)(i)(A) of this section as modified by paragraph (g)(6) of this section for purposes of determining the section 965(i) net tax liability with respect to the S corporation, the amount described in paragraph (g)(10)(i)(B) of this section, and the section 965(i) net tax liability with respect to the S corporation. The statement must be filed in the manner prescribed in publications, forms, instructions, or other guidance.

(3) *Triggering events*—(i) *In general.* If a shareholder makes a section 965(i) election with respect to an S corporation, the shareholder defers payment of its section 965(i) net tax liability with respect to the S corporation until the shareholder's taxable year that includes the occurrence of a triggering event described in paragraph (c)(3)(ii) of this section with respect to the section 965(i) net tax liability with respect to the S corporation. If a triggering event described in paragraph (c)(3)(ii) of this section with respect to an S corporation occurs, except as provided in paragraph (c)(3)(iv) of this section, the shareholder's section 965(i) net tax liability with respect to the S corporation will be assessed as an addition to tax for the shareholder's taxable year that includes the triggering event.

(ii) *Triggering events.* The following events are considered triggering events for purposes of paragraph (c)(3)(i) of this section with respect to a shareholder's section 965(i) net tax liability with respect to an S corporation—

(A) The corporation ceases to be an S corporation (determined as of the first day of the first taxable year that the corporation is not an S corporation);

(B) A liquidation, sale, exchange, or other disposition of substantially all of the assets of the S corporation (including in a title 11 or similar case), a cessation of business by the S corporation, or the S corporation ceasing to exist; or

(C) The transfer of any share of stock of the S corporation by the shareholder (including by reason of death or otherwise).

(iii) *Partial transfers.* If an S corporation shareholder transfers less than all of its shares of stock of the S corporation, the transfer will be a triggering event only with respect to the portion of a shareholder's section 965(i) net tax liability that is properly allocable to the transferred shares.

(iv) *Eligible section 965(i) transferee exception*—(A) *In general.* Paragraph (c)(3)(i) of this section will not apply (such that a shareholder's section 965(i) net tax liability with respect to an S corporation will not be assessed as an addition to tax for the shareholder's taxable year that includes the triggering event) if the requirements described in paragraphs (c)(3)(iv)(A)*(1)* and *(2)* of this section are satisfied. A shareholder with respect to which a triggering event described in this paragraph (c)(3)(iv)(A) occurs is referred to as an *eligible section 965(i) transferor.*

(*1*) *Requirement to have a covered triggering event.* The triggering event satisfies the requirements of this paragraph (c)(3)(iv)(A)*(1)* if it is described in paragraph (c)(3)(ii)(C) of this section.

(*2*) *Requirement to enter into a transfer agreement.* The shareholder with respect to which a triggering event occurs and an eligible section 965(i) transferee (as defined in paragraph (c)(3)(iv)(B)*(1)* of this section) must enter into an agreement with the Commissioner that satisfies the requirements of paragraph (c)(3)(iv)(B) of this section.

(B) *Transfer agreement*—(*1*) *Eligibility.* A transfer agreement that satisfies the requirements of this paragraph (c)(3)(iv)(B) may be entered into by an eligible section 965(i) transferor and an eligible section 965(i) transferee. For this purpose, the term *eligible section 965(i) transferee* refers to a single United States person that is not a domestic pass-through entity.

(*2*) *Filing requirements*—(*i*) *In general.* A transfer agreement must be timely filed. Except as provided in paragraph (c)(3)(iv)(B)(*2*)(*ii*) of this section, a transfer agreement is considered timely filed only if the transfer agreement is filed within 30 days of the date that the triggering event occurs. The transfer agreement must be filed in accordance with the rules provided in forms, instructions, or other guidance. In addition, a duplicate copy of the transfer agreement must be attached to the returns of both the eligible section 965(i) transferee and the eligible section 965(i) transferor for the taxable year during which the triggering event occurs filed by the due date (taking into account extensions, if any) for such returns. Relief is not available under

§ 301.9100–2 or 301.9100–3 to file a transfer agreement late.

(*ii*) *Transition rule.* If a triggering event occurs before September 10, 2018, the transfer agreement must be filed by October 9, 2018 in order to be considered timely filed.

(*3*) *Signature requirement.* The transfer agreement that is filed within 30 days of the triggering event must be signed under penalties of perjury by a person who is authorized to sign a return on behalf of the eligible section 965(i) transferor and a person who is authorized to sign a return on behalf of the eligible section 965(i) transferee.

(*4*) *Terms of agreement.* A transfer agreement under this paragraph (c)(3)(iv)(B) must be entitled ''Transfer Agreement Under Section 965(i)(2)'' and must contain the following information and representations:

(*i*) A statement that the document constitutes an agreement by the eligible section 965(i) transferee to assume the liability of the eligible section 965(i) transferor for the unpaid portion of the section 965(i) net tax liability, or, in the case of a partial transfer, for the unpaid portion of the section 965(i) net tax liability attributable to the transferred stock;

(*ii*) A statement that the eligible section 965(i) transferee agrees to comply with all of the conditions and requirements of section 965(i) and paragraph (c) of this section, including the annual reporting requirement, as well as any other applicable requirements in the section 965 regulations;

(*iii*) The name, address, and taxpayer identification number of the eligible section 965(i) transferor and the eligible section 965(i) transferee;

(*iv*) The amount of the eligible section 965(i) transferor's unpaid section 965(i) net tax liability or, in the case of a partial transfer, the unpaid portion of the section 965(i) net tax liability attributable to the transferred stock, each as determined by the eligible section 965(i) transferor, which is subject to adjustment by the Commissioner;

(*v*) A copy of the eligible section 965(i) transferor's most recent Form 965–A;

(*vi*) A detailed description of the triggering event that led to the transfer agreement, including the name and taxpayer identification number of the S corporation with respect to which the section 965(i) election was effective;

(*vii*) A representation that the eligible section 965(i) transferee is able to pay the section 965(i) net tax liability being assumed; and

(*viii*) An acknowledgement that the eligible section 965(i) transferor and any successor to the eligible section 965(i) transferor will remain jointly and severally liable for the section 965(i) net tax liability being assumed by the eligible section 965(i) transferee.

(C) *Consent of Commissioner*—(*1*) *In general.* Except as otherwise provided in publications, instructions, forms, or other guidance, if an eligible section 965(i) transferor and an eligible section 965(i) transferee file a transfer agreement in accordance with the provisions of paragraph (c)(3)(iv)(B) of this section, the eligible section 965(i) transferor and the eligible section 965(i) transferee will be considered to have entered into an agreement with the Commissioner for purposes of section 965(i)(2) and paragraph (c)(3)(iv) of this section. If the Commissioner determines that additional information is necessary (for example, additional information regarding the ability of the eligible section 965(i) transferee to pay the eligible section 965(i) transferor's unpaid net section 965(i) tax liability), the eligible section 965(i) transferee must provide such information upon request.

(*2*) *Material misrepresentations and omissions.* If the Commissioner determines that an agreement filed by an eligible section 965(i) transferor and an eligible section 965(i) transferee contains a material misrepresentation or material omission, then the Commissioner may reject the transfer agreement (effective as of the date of the related triggering event). In the alternative, on the date that the Commissioner determines that the transfer agreement includes a material misrepresentation or material omission, the Commissioner may determine that a triggering event has occurred with respect to the eligible section 965(i) transferee as of the date of the determination, such that the unpaid section 965(i) net tax liability of the eligible section 965(i) transferor that was assumed by the eligible section 965(i) transferee becomes due on the date of the determination.

(D) *Effect of assumption*—(*1*) *In general.* When the exception in this paragraph (c)(3)(iv) applies with respect to an eligible section 965(i) transferor and an eligible section 965(i) transferee, the eligible section 965(i) transferee assumes all of the outstanding obligations and responsibilities of the eligible section 965(i) transferor with respect to the section 965(i) net tax liability with respect to the S corporation as though the eligible section 965(i) transferee had included the section 965(a) inclusion in income. Accordingly, the eligible section 965(i) transferee is responsible for making payments and reporting with respect to any unpaid section 965(i) net tax liability with respect to the S corporation. In addition, for example, if a triggering event described in paragraph (c)(3)(ii) of this section occurs with respect to an eligible section 965(i) transferee, any unpaid portion of the section 965(i) net tax liability of the eligible section 965(i) transferor that was assumed by the eligible section 965(i) transferee becomes due on the date of such event, subject to any applicable exception in paragraph (c)(3)(iv) or (v) of this section.

*(2) Eligible section 965(i) transferor liability.* An eligible section 965(i) transferor remains jointly and severally liable for any unpaid installment payments of the eligible section 965(i) transferor that were assumed by the eligible section 965(i) transferee, as well as any penalties, additions to tax, or other additional amounts attributable to such net tax liability.

(v) *Coordination with section 965(h) election*—(A) *In general.* Subject to the limitation described in paragraph (c)(3)(v)(D) of this section, a shareholder that has made a section 965(i) election with respect to an S corporation, upon the occurrence of a triggering event with respect to such S corporation, may make a section 965(h) election with respect to the portion of the shareholder's section 965(i) net tax liability with respect to such S corporation that is assessed as an addition to tax for the shareholder's taxable year that includes the triggering event pursuant to paragraph (c)(3)(i) of this section as if such portion were a section 965(h) net tax liability.

(B) *Timing for election.* A section 965(h) election made pursuant to section 965(i)(4) and paragraph (c)(3)(v)(A) of this section must be made no later than the due date (taking into account extensions, if any) for the shareholder's return for the taxable year in which the triggering event with respect to the S corporation occurs. Relief is not available under § 301.9100–2 or 301.9100–3 to make a late election.

(C) *Due date for installment.* If a shareholder has made a section 965(h) election pursuant to section 965(i)(4) and paragraph (c)(3)(v)(A) of this section, the payment of the first installment (as described in paragraph (b)(1)(i) of this section) must be made no later than the due date (without regard to extensions) for the shareholder's return of tax for the taxable year in which the triggering event with respect to the S corporation occurs.

(D) *Limitation*—(*1*) *In general.* Notwithstanding paragraph (c)(3)(v)(A)

of this section, if the triggering event with respect to an S corporation is a triggering event described in paragraph (c)(3)(ii)(B) of this section, then the section 965(h) election may only be made with the consent of the Commissioner.

(*2*) *Manner of obtaining consent—(i) In general.* In order to obtain the consent of the Commissioner as required by paragraph (c)(3)(v)(D)(*1*) of this section, the shareholder intending to make the section 965(h) election must file the agreement described in paragraph (c)(3)(v)(D)(*4*) of this section within 30 days of the occurrence of the triggering event, except as described in paragraph (c)(3)(v)(D)*(2)(ii)* of this section. The agreement must be filed in accordance with the rules provided in forms, instructions, or other guidance. In addition, a duplicate copy of the agreement must be filed, with the shareholder's timely-filed return for the taxable year during which the triggering event occurs (taking into account extensions, if any), along with the election statement described in paragraph (b)(2)(iii) of this section. Relief is not available under § 301.9100–2 or 301.9100–3 to file an agreement late.

(*ii*) *Transition rule.* If a triggering event occurs before September 10, 2018, the agreement must be filed by October 9, 2018 in order to be considered timely filed.

(*3*) *Signature requirement.* The agreement that is filed within 30 days of the triggering event must be signed under penalties of perjury by the shareholder.

(*4*) *Terms of agreement.* The agreement under this paragraph (c)(3)(v)(D) must be entitled ''Consent Agreement Under Section 965(i)(4)(D)'' and must contain the following information and representations—

(*i*) A statement that the shareholder agrees to comply with all of the conditions and requirements of section 965(h) and paragraph (b) of this section, as well as any other applicable requirements in the section 965 regulations;

(*ii*) The name, address, and taxpayer identification number of the shareholder;

(*iii*) The amount of the section 965(i) net tax liability under section 965 remaining unpaid with respect to which the section 965(h) election is made pursuant to section 965(i)(4)(D) and paragraph (c)(3)(v)(A) of this section, as determined by the shareholder, which is subject to adjustment by the Commissioner; and

(*iv*) A representation that the shareholder is able to make the payments required under section 965(h) and paragraph (b) of this section with respect to the portion of the total net tax liability under section 965 remaining unpaid described in paragraph (c)(3)(v)(D)*(iii)* of this section.

(*5*) *Consent of Commissioner—(i) In general.* If a shareholder files an agreement in accordance with the provisions of paragraph (c)(3)(v)(D) of this section, the shareholder will be considered to have obtained the consent of the Commissioner for purposes of section 965(i)(4)(D) and paragraph (c)(3)(v)(D)(*1*) of this section. However, if the Commissioner reviews the agreement and determines that additional information is necessary, the shareholder must provide such information upon request.

(*ii*) *Material misrepresentations and omissions.* If the Commissioner determines that an agreement filed by a shareholder in accordance with the provisions of this paragraph (c)(3)(v)(D) contains a material misrepresentation or material omission, then the Commissioner may reject the agreement (effective as of the date of the related triggering event).

(4) *Joint and several liability.* If any shareholder of an S corporation makes a section 965(i) election, the S corporation is jointly and severally liability for the payment of the shareholder's section 965(i) net tax liability with respect to the S corporation, as well as any penalties, additions to tax, or other additional amounts attributable to such net tax liability.

(5) *Extension of limitation on collection.* If an S corporation shareholder makes a section 965(i) election with respect to its section 965(i) net tax liability with respect to an S corporation, any limitation on the time period for the collection of the net tax liability shall not begin before the date of the triggering event with respect to the S corporation.

(6) *Annual reporting requirement*—(i) *In general.* A shareholder that makes a section 965(i) election with respect to its section 965(i) net tax liability with respect to an S corporation is required to report the amount of its deferred net tax liability on its return of tax for the taxable year in which the election is made and on the return of tax for each subsequent taxable year until such net tax liability has been fully assessed.

(ii) *Failure to report.* If a shareholder fails to report the amount of its deferred net tax liability as required with respect to any taxable year by the due date (taking into account extensions, if any) for the return of tax for that taxable year, five percent of such deferred net tax liability will be assessed as an addition to tax for such taxable year.

(d) *Section 965(m) election and special rule for real estate investment trusts*—(1) *In general.* A real estate investment trust may elect under section 965(m) and this paragraph (d) to defer the inclusion in gross income (for purposes of the computation of real estate investment trust taxable income under section 857(b)) of its REIT section 965 amounts and include them in income according to the schedule described in paragraph (d)(2) of this section. This election is revocable only by including in gross income (for purposes of the computation of real estate investment trust taxable income under section 857(b)) the full amount of the REIT section 965 amounts.

(2) *Inclusion schedule for section 965(m) election.* If a real estate investment trust makes the section 965(m) election, the REIT section 965 amounts will be included in the real estate investment trust's gross income as follows—

(i) Eight percent of the REIT section 965 amounts in each taxable year in the five-taxable year period beginning with the taxable year the amount would otherwise be included;

(ii) Fifteen percent of the REIT section 965 amounts in the first year following the five year period described in paragraph (d)(2)(i) of this section;

(iii) Twenty percent of the REIT section 965 amounts in the second year following the five year period described in paragraph (d)(2)(i) of this section; and

(iv) Twenty-five percent of the REIT section 965 amounts in the third year following the five year period described in paragraph (d)(2)(i) of this section.

(3) *Manner of making election*—(i) *Eligibility.* A real estate investment trust with section 965(a) inclusions may make the section 965(m) election.

(ii) *Timing.* A section 965(m) election must be made no later than the due date (taking into account extensions, if any) for the return for the first year of the five year period described in paragraph (d)(2)(i) of this section. Relief is not available under § 301.9100–2 or 301.9100–3 to make a late election.

(iii) *Election statement.* Except as otherwise provided in publications, forms, instructions, or other guidance, to make a section 965(m) election, a real estate investment trust must attach a statement, signed under penalties of perjury, to its return for the taxable year in which it would otherwise be required to include the REIT section 965 amounts in gross income. The statement must include the real estate investment trust's name, taxpayer identification number, REIT section 965 amounts, and the

anticipated amounts of each portion of the REIT section 965 amounts described under paragraph (d)(2) of this section, and the statement must be filed in the manner prescribed in publications, forms, instructions, or other guidance.

(4) *Coordination with section 965(h).* A real estate investment trust that makes the section 965(m) election may not also make a section 965(h) election for any year with respect to which a section 965(m) election is in effect.

(5) *Acceleration of inclusion.* If a real estate investment trust makes a section 965(m) election and subsequently there is a liquidation, sale, exchange, or other disposition of substantially all of the assets of the real estate investment trust (including in a title 11 or similar case), or a cessation of business by the real estate investment trust, any amount not yet included in gross income (for purposes of the computation of real estate investment trust taxable income under section 857(b)) as a result of the section 965(m) election will be so included as of the day before the date of the event. The unpaid portion of any tax liability with respect to such inclusion will be due on the date of the event (or in the case of a title 11 or similar case, the day before the petition is filed).

(6) *Treatment of section 965(a) inclusions of a real estate investment trust.* Regardless of whether a real estate investment trust has made a section 965(m) election, and regardless of whether it is a United States shareholder of a deferred foreign income corporation, any section 965(a) inclusions of the real estate investment trust are not taken into account as gross income of the real estate investment trust for purposes of applying paragraphs (2) and (3) of section 856(c) for any taxable year for which the real estate investment trust takes into account a section 965(a) inclusion, including pursuant to paragraph (d)(2) of this section.

(e) *Section 965(n) election*—(1) *In general*—(i) *General rule.* A person may elect to not take into account the amount described in paragraph (e)(1)(ii) of this section in determining its net operating loss under section 172 for the taxable year or in determining the amount of taxable income for such taxable year (computed without regard to the deduction allowable under section 172) that may be reduced by net operating loss carryovers or carrybacks to such taxable year under section 172. The election for each taxable year is irrevocable.

(ii) *Applicable amount for section 965(n) election.* If a person makes a section 965(n) election, the amount referred to in paragraph (e)(1)(i) of this section is the sum of—

(A) The person's section 965(a) inclusions for the taxable year reduced by the person's section 965(c) deductions for the taxable year, and

(B) In the case of a domestic corporation, the taxes deemed paid under section 960(a)(1) for the taxable year with respect to the person's section 965(a) inclusions that are treated as dividends under section 78.

(iii) *Scope of section 965(n) election.* If a person makes a section 965(n) election, the election applies to both net operating losses for the taxable year for which the election is made and the net operating loss carryovers or carrybacks to such taxable year, each in their entirety. Any section 965(n) election made by the agent (within the meaning of § 1.1502–77) of a consolidated group applies to all net operating losses available to the consolidated group, including all components of the consolidated net operating loss deduction (as defined in § 1.1502–21(a)).

(2) *Manner of making election*—(i) *Eligibility.* A person with a section 965(a) inclusion may make the section 965(n) election.

(ii) *Timing.* A section 965(n) election must be made no later than the due date (taking into account extensions, if any) for the person's return for the taxable year to which the election applies. Relief is not available under § 301.9100–2 or 301.9100–3 to make a late election.

(iii) *Election statement.* Except as otherwise provided in publications, forms, instructions, or other guidance, to make a section 965(n) election, a person must attach a statement, signed under penalties of perjury, to its return for the taxable year to which the election applies. The statement must include the person's name, taxpayer identification number, the amounts described in section 965(n)(2)(A) and paragraph (e)(1)(ii)(A) of this section and section 965(n)(2)(B) and paragraph (e)(1)(ii)(B) of this section, and the sum thereof, and the statement must be filed in the manner prescribed in instructions or other guidance.

(f) *Election to use alternative method for calculating post-1986 earnings and profits*—(1) *Effect of election for specified foreign corporations that do not have a 52–53-week taxable year.* If an election is made under this paragraph (f) with respect to a specified foreign corporation that does not have a 52–53-week taxable year, the amount of the post-1986 earnings and profits (including a deficit) as of the E&P measurement date on November 2, 2017, is determined under paragraph (f)(3) of this section. The election described in this paragraph (f) is irrevocable. A specified foreign corporation that does not have a 52–53-week taxable year may not use the alternative method of determination in paragraph (f)(3) of this section for purposes of determining its post-1986 earnings and profits on the E&P measurement date on December 31, 2017.

(2) *Effect of election for specified foreign corporations that have a 52–53-week taxable year.* If an election is made under this paragraph (f) with respect to a specified foreign corporation that has a 52–53-week taxable year, the amount of the post-1986 earnings and profits (including a deficit) as of both E&P measurement dates is determined under paragraph (f)(3) of this section. The election described in this paragraph (f) is irrevocable.

(3) *Computation of post-1986 earnings and profits using alternative method.* With respect to an E&P measurement date, the post-1986 earnings and profits of a specified foreign corporation for which an election is properly made equals the sum of—

(i) The specified foreign corporation's post-1986 earnings and profits (including a deficit) determined as of the notional measurement date, as if it were an E&P measurement date, plus

(ii) The specified foreign corporation's annualized earnings and profits amount with respect to the notional measurement date.

(4) *Definitions*—(i) *52–53-week taxable year.* The term *52–53-week taxable year* means a taxable year described in § 1.441–2(a)(1).

(ii) *Annualized earnings and profits amount.* The term *annualized earnings and profits amount* means, with respect to a specified foreign corporation, an E&P measurement date, and a notional measurement date, the amount equal to the product of the number of days between the notional measurement date and the E&P measurement date (not including the former, but including the latter) multiplied by the daily earnings amount of the specified foreign corporation. The annualized earnings and profits amount is expressed as a negative number if the E&P measurement date precedes the notional measurement date.

(iii) *Daily earnings amount.* The term *daily earnings amount* means, with respect to a specified foreign corporation and a notional measurement date, the post-1986 earnings and profits (including a deficit) of the specified foreign corporation determined as of the close of the notional measurement date that were earned (or incurred) during

the specified foreign corporation's taxable year that includes the notional measurement date, divided by the number of days that have elapsed in such taxable year as of the close of the notional measurement date.

(iv) *Notional measurement date.* The term *notional measurement date* means—

(A) With respect to an E&P measurement date of a specified foreign corporation with a 52–53-week taxable year, the closest end of a fiscal month to such E&P measurement date, and

(B) With respect to the E&P measurement date on November 2, 2017, of all specified foreign corporations not described in paragraph (f)(4)(iv)(A) of this section, October 31, 2017.

(5) *Manner of making election*—(i) *Eligibility.* An election with respect to a specified foreign corporation to use the alternative method of calculating post-1986 earnings and profits as of an E&P measurement date pursuant to this paragraph (f) must be made on behalf of the specified foreign corporation by a controlling domestic shareholder (as defined in § 1.964–1(c)(5)) pursuant to the rules of § 1.964–1(c)(3).

(ii) *Timing.* An election under this paragraph (f) must be made no later than the due date (taking into account extensions, if any) for the person's return for the first taxable year in which the person has a section 965(a) inclusion amount with respect to the specified foreign corporation or in which the person takes into account a specified E&P deficit with respect to the specified corporation for purposes of computing a section 965(a) inclusion amount with respect to another specified foreign corporation. Relief is not available under § 301.9100–2 or 301.9100–3 to make a late election.

(iii) *Election statement.* Except as otherwise provided in publications, forms, instructions, or other guidance, to make an election under this paragraph (f), a person must attach a statement, signed under penalties of perjury, to the person's return for the taxable year described in paragraph (f)(5)(ii) of this section. The statement must include the person's name, taxpayer identification number, and the name and taxpayer identification number, if any, of the specified foreign corporation with respect to which the election is made, and the statement must be filed in the manner prescribed in instructions or other guidance.

(6) *Examples.* The following examples illustrate the application of this paragraph (f).

*Example 1.* (i) *Facts.* FS, a foreign corporation, has a calendar year taxable year, and as of October 31, 2017, FS has post-1986 earnings and profits of 10,000u, 3,040u of which were earned during the taxable year that includes October 31, 2017. An election is properly made under paragraph (f)(5) of this section with respect to FS, allowing FS to determine its post-1986 earnings and profits under the alternative method with respect to its E&P measurement date on November 2, 2017.

(ii) *Analysis.* As of the close of October 31, 2017, the notional measurement date with respect to the E&P measurement date on November 2, 2017, 304 days have elapsed in the taxable year of FS that includes October 31, 2017. Therefore, FS's daily earnings amount is 10u (3,040u divided by 304), and FS's annualized earnings and profits amount is 20u (10u multiplied by 2 (the number of days between the notional measurement date on October 31, 2017, and the E&P measurement date on November 2, 2017)). Accordingly, FS's post-1986 earnings and profits as of November 2, 2017, are 10,020u (its post-1986 earnings and profits as of October 31, 2017 (10,000u), plus its annualized earnings and profits amount (20u)).

*Example 2.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 1* of this paragraph (f)(6), except that a deficit of 3,040u was incurred during the taxable year that includes October 31, 2017.

(ii) *Analysis.* The analysis is the same as in paragraph (ii) of *Example 1* of this paragraph (f)(6), except that FS's daily earnings amount is (10u) ((3,040u) divided by 304), and FS's annualized earnings and profits amount is (20u) ((10u) multiplied by 2 (the number of days between the notional measurement date on October 31, 2017, and the E&P measurement date on November 2, 2017)). Accordingly, FS's post-1986 earnings and profits as of November 2, 2017, are 9,980u (its post-1986 earnings and profits as of October 31, 2017 (10,000u), plus its annualized earnings and profits amount ((20u))).

(g) *Definitions.* This paragraph (g) provides definitions that apply for purposes of this section.

(1) *Deferred net tax liability.* The term *deferred net tax liability* means, with respect to any taxable year of a person, the amount of the section 965(i) net tax liability the payment of which has been deferred under section 965(i) and paragraph (c) of this section.

(2) *REIT section 965 amounts.* The term *REIT section 965 amounts* means, with respect to a real estate investment trust and a taxable year of the real estate investment trust, the aggregate amount of section 965(a) inclusions and section 965(c) deductions that would (but for section 965(m)(1)(B) and paragraph (d) of this section) be taken into account in determining the real estate investment trust's income for the taxable year.

(3) *Section 965(h) election.* The term *section 965(h) election* means the election described in section 965(h)(1) and paragraph (b)(1) of this section.

(4) *Section 965(h) net tax liability.* The term *section 965(h) net tax liability* means, with respect to a person that has made a section 965(h) election, the total net tax liability under section 965 reduced by the aggregate amount of the person's section 965(i) net tax liabilities, if any, with respect to which section 965(i) elections are effective.

(5) *Section 965(i) election.* The term *section 965(i) election* means the election described in section 965(i)(1) and paragraph (c)(1) of this section.

(6) *Section 965(i) net tax liability.* The term *section 965(i) net tax liability* means, with respect to an S corporation and a shareholder of the S corporation, in the case in which a section 965(i) election is made, the amount determined pursuant to paragraph (g)(10)(i) of this section by adding before the word ''over'' in (g)(10)(i)(A) of this section ''determined as if the only section 965(a) inclusions included in income by the person are domestic pass-through entity shares of section 965(a) inclusions by the S corporation with respect to deferred foreign income corporations of which the S corporation is a United States shareholder.''

(7) *Section 965(m) election.* The term *section 965(m) election* means the election described in section 965(m)(1)(B) and paragraph (d)(1) of this section.

(8) *Section 965(n) election.* The term *section 965(n) election* means the election described in section 965(n)(1) and paragraph (e)(1)(i) of this section.

(9) *Specified individual.* The term *specified individual* means, with respect to a taxable year, a person described in § 1.6081–5(a)(5) or (6) who receives an extension of time to file and pay under § 1.6081–5(a) for the taxable year.

(10) *Total net tax liability under section 965*—(i) *General rule.* The term *total net tax liability under section 965* means, with respect to a person, the excess (if any) of—

(A) The person's net income tax for the taxable year in which the person includes a section 965(a) inclusion in income, over—

(B) The person's net income tax for the taxable year determined—

*(1)* Without regard to section 965, and

*(2)* Without regard to any income, deduction, or credit properly attributable to a dividend received (directly or through a chain of ownership described in section 958(a)) by the person (or, in the case of a domestic pass-through owner, by the person's domestic pass-through entity) from a deferred foreign income corporation.

(ii) *Net income tax.* For purposes of this paragraph (g)(10), the term *net*

*income tax* means the regular tax liability (as defined in section 26(b)) reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A of chapter 1 of subtitle A of the Internal Revenue Code.

(iii) *Foreign tax credits.* The foreign tax credit disregarded in determining net income tax determined under paragraph (g)(10)(i)(B) of this section includes the credit for foreign income taxes deemed paid with respect to section 965(a) inclusions or foreign income taxes deemed paid with respect to a dividend, including a distribution that would have been treated as a dividend in the absence of section 965. The foreign tax credit disregarded under paragraph (g)(10)(i)(B) of this section also includes the credit for foreign income taxes imposed on distributions of section 965(a) previously taxed earnings and profits or 965(b) previously taxed earnings and profits made in the taxable year in which the person includes a section 965(a) inclusion in income.

■ **Par. 12.** Section 1.965–8 is added to read as follows:

**§ 1.965–8 Affiliated groups (including consolidated groups).**

(a) *Scope.* This section provides rules for applying section 965 and the section 965 regulations to members of an affiliated group (as defined in section 1504(a)), including members of a consolidated group (as defined in § 1.1502–1(h)). Paragraph (b) of this section provides guidance regarding the application of section 965(b)(5) to determine the section 965(a) inclusion amounts of a member of an affiliated group. Paragraph (c) of this section provides guidance for designating the source of aggregate unused E&P deficits. Paragraph (d) provides rules regarding earning and profits and stock basis adjustments. Paragraph (e) of this section provides rules that treat members of a consolidated group as a single person for certain purposes. Paragraph (f) of this section provides definitions that apply for purposes of this section. Paragraph (g) of this section provides examples illustrating the application of this section. For additional definitions that apply for purposes of the section 965 regulations, see § 1.965–1(f).

(b) *Reduction of E&P net surplus shareholder's pro rata share of the section 965(a) earnings amount of a deferred foreign income corporation by the allocable share of the applicable share of the aggregate unused E&P deficit*—(1) *In general.* This paragraph (b) applies after the application of § 1.965–1(b)(2) for purposes of determining the section 965(a) inclusion amount with respect to a deferred foreign income corporation of a section 958(a) U.S. shareholder that is both an E&P net surplus shareholder and a member of an affiliated group in which not all members are members of the same consolidated group. If this paragraph (b) applies, the U.S. dollar amount of the section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of the deferred foreign income corporation is further reduced (but not below zero) by the deferred foreign income corporation's allocable share of the section 958(a) U.S. shareholder's applicable share of the affiliated group's aggregate unused E&P deficit.

(2) *Consolidated group as part of an affiliated group.* If some, but not all, members of an affiliated group are members of a consolidated group, then the consolidated group is treated as a single member of the affiliated group for purposes of § 1.965–1(b)(2) and paragraph (b)(1) of this section.

(c) *Designation of portion of excess aggregate foreign E&P deficit taken into account*—(1) *In general.* This paragraph (c) provides rules for designating the source of an aggregate unused E&P deficit of an affiliated group that is not also a consolidated group taken into account under section 965(b)(5) and paragraph (b) of this section if the amount described in paragraph (f)(1)(i)(A) of this section with respect to the affiliated group exceeds the amount described in paragraph (f)(1)(i)(B) of this section with respect to the affiliated group. If this paragraph (c)(1) applies, each member of the affiliated group that is an E&P net deficit shareholder must designate by maintaining in its books and records a statement (identical to the statement maintained by all other such members) setting forth the portion of the excess aggregate foreign E&P deficit of the E&P net deficit shareholder taken into account under section 965(b)(5) and paragraph (b) of this section. See § 1.965–2(d)(2)(ii)(B) for a rule for designating the portion of a section 958(a) U.S. shareholder's pro rata share of a specified E&P deficit of an E&P deficit foreign corporation taken into account under section 965(b), § 1.965–1(b)(2), and paragraph (b) of this section, as applicable.

(2) *Consolidated group as part of an affiliated group.* If some, but not all, members of an affiliated group are properly treated as members of a consolidated group, then the consolidated group is treated as a single member of the affiliated group for purposes of applying paragraph (c)(1) of this section.

(d) [Reserved]

(2) *Consolidated groups.* See § 1.1502–33(d)(1) for adjustments to members' earnings and profits and § 1.1502–32(b)(3) for adjustments to members' basis.

(e) *Treatment of a consolidated group as a single section 958(a) U.S. shareholder or a single person*—(1) *In general.* All members of a consolidated group that are section 958(a) U.S. shareholders of a specified foreign corporation are treated as a single section 958(a) U.S. shareholder for purposes of section 965(b) and § 1.965–1(b)(2). Furthermore, all members of a consolidated group are treated as a single person for purposes of paragraphs (h), (k), and (n) of section 965 and § 1.965–7. Thus, for example, any election governed by section 965(h) and § 1.965–7(b) must be made by the agent (within the meaning of § 1.1502–77) of the group as a single election on behalf of all members of the consolidated group. Similarly, the determination of whether the transfer of assets by one member to a non-member of the consolidated group would constitute an acceleration event under section § 1.965–7(b)(3)(ii)(B) takes into account all of the assets of the consolidated group, which for purposes of this determination, includes all of the assets of each consolidated group member. In analyzing issues relating to the transfer of assets of a consolidated group, appropriate adjustments are made to prevent the duplication of assets or asset value.

(2) *Limitation.* Paragraph (e)(1) of this section does not apply to treat all members of a consolidated group as a single section 958(a) U.S. shareholder or a single person, as applicable, for purposes of determining the amount of any member's inclusion under section 951 (including a section 965(a) inclusion), the foreign income taxes deemed paid with respect to a section 965(a) inclusion (see sections 960 and 902), or any purpose other than those specifically listed in paragraph (e)(1) of this section or another provision of the section 965 regulations.

(3) *Determination of section 965(c) deduction amount.* Paragraph (e)(1) of this section does not apply to treat all members of a consolidated group as a single section 958(a) U.S. shareholder for purposes of determining the amount of any member's section 965(c) deduction amount. However, for purposes of determining the section 965(c) deduction amount of any section 958(a) U.S. shareholder that is a member of a consolidated group, the aggregate foreign cash position of the section 958(a) U.S. shareholder is equal to the

aggregate section 965(a) inclusion amount of the section 958(a) U.S. shareholder multiplied by the group cash ratio of the consolidated group.

(f) *Definitions.* This paragraph (f) provides definitions that apply for purposes of applying the section 965 regulations to members of an affiliated group, including members of a consolidated group.

(1) *Aggregate unused E&P deficit*—(i) *General rule.* The term *aggregate unused E&P deficit* means, with respect to an affiliated group, the lesser of—

(A) The sum of the excess aggregate foreign E&P deficit with respect to each E&P net deficit shareholder that is a member of the affiliated group, or

(B) The amount determined under paragraph (f)(3)(ii) of this section.

(ii) *Reduction with respect to E&P net deficit shareholders that are not wholly owned by the affiliated group.* If the group ownership percentage of an E&P net deficit shareholder is less than 100 percent, the amount of the excess aggregate foreign E&P deficit with respect to the E&P net deficit shareholder that is taken into account under paragraph (f)(1)(i) of this section is the product of the group ownership percentage multiplied by the excess aggregate foreign E&P deficit.

(2) *Allocable share.* The term *allocable share* means, with respect to a deferred foreign income corporation and an E&P net surplus shareholder's applicable share of an aggregate unused E&P deficit of an affiliated group, the product of the E&P net surplus shareholder's applicable share of the affiliated group's aggregate unused E&P deficit and the ratio described in § 1.965–1(f)(11) with respect to the deferred foreign income corporation.

(3) *Applicable share.* The term *applicable share* means, with respect to an E&P net surplus shareholder and an aggregate unused E&P deficit of an affiliated group, the amount that bears the same proportion to the affiliated group's aggregate unused E&P deficit as—

(i) The product of—

(A) The E&P net surplus shareholder's group ownership percentage, multiplied by

(B) The amount that would (but for section 965(b)(5) and paragraph (b) of this section) constitute the E&P net surplus shareholder's aggregate section 965(a) inclusion amount, bears to

(ii) The aggregate amount determined under paragraph (f)(3)(i) of this section with respect to all E&P net surplus shareholders that are members of the group.

(4) *Consolidated group aggregate foreign cash position.* The term *consolidated group aggregate foreign cash position* means, with respect to a consolidated group, the sum of the amount that would be the aggregate foreign cash position (as defined in § 1.965–1(f)(8)(i)) of each member of the consolidated group that is a section 958(a) U.S. shareholder determined as if each such member were not a member of a consolidated group.

(5) *E&P net deficit shareholder.* The term *E&P net deficit shareholder* means a section 958(a) U.S. shareholder that has an excess aggregate foreign E&P deficit.

(6) *E&P net surplus shareholder.* The term *E&P net surplus shareholder* means a section 958(a) U.S. shareholder that would (but for section 965(b)(5) and paragraph (b) of this section) have an aggregate section 965(a) inclusion amount greater than zero.

(7) *Excess aggregate foreign E&P deficit.* The term *excess aggregate foreign E&P deficit* means, with respect to a section 958(a) U.S. shareholder, the amount, if any, by which the amount described in § 1.965–1(f)(9)(i) with respect to the section 958(a) U.S. shareholder exceeds the amount described in § 1.965–1(f)(9)(ii) with respect to the section 958(a) U.S. shareholder.

(8) *Group cash ratio.* The term *group cash ratio* means, with respect to a consolidated group, the ratio of—

(i) The consolidated group aggregate foreign cash position, to

(ii) The sum of the aggregate section 965(a) inclusion amounts of all members of the consolidated group.

(9) *Group ownership percentage.* The term *group ownership percentage* means, with respect to a section 958(a) U.S. shareholder that is a member of an affiliated group, the percentage of the value of the stock of the United States shareholder which is held by other includible corporations in the affiliated group. Notwithstanding the preceding sentence, the group ownership percentage of the common parent of the affiliated group is 100 percent. Any term used in this paragraph (f)(9) that is also used in section 1504 has the same meaning as when used in such section. Additionally, if the term is used in the context of a rule for which all members of a consolidated group are treated as a single section 958(a) U.S. shareholder under paragraph (e)(1) of this section, then the group ownership percentage is determined solely with respect to the value of the stock of the common parent of the consolidated group held by other includible corporations that are not members of the consolidated group.

(g) *Examples.* The following examples illustrate the application of this section.

*Example 1.* Application of affiliated group rule. (i) *Facts.* (A) *In general.* USP owns all of the stock of USS1, USS2, and USS3. Each of USP, USS1, USS2 and USS3 is a domestic corporation and is a member of an affiliated group of which USP is the common parent (the ''USP Group''). The USP Group has not elected to file a consolidated federal income tax return. USS1 owns all of the stock of CFC1 and CFC2, USS2 owns all of the stock of CFC3, and USS3 owns all of the stock of CFC4. Each of CFC1, CFC2, CFC3, and CFC4 is a controlled foreign corporation within the meaning of section 957(a) and, therefore, each is a specified foreign corporation under section 965(e) and § 1.965–1(f)(45). Each of USP, USS1, USS2, USS3, CFC1, CFC2, CFC3, and CFC4 has the calendar year as its taxable year.

(B) *Facts relating to section 965.* CFC1 and CFC3 are deferred foreign income corporations with section 965(a) earnings amounts of $600x and $300x, respectively. CFC1 and CFC3 have cash positions of $0x and $50x, respectively, on each of their cash measurement dates. CFC2 and CFC4 are E&P deficit foreign corporations with specified E&P deficits of $400x and $100x, respectively. CFC2 and CFC4 have cash positions of $100x and $50x, respectively, on each of their cash measurement dates. CFC1, CFC2, CFC3, and CFC4 all use the U.S. dollar as their functional currency.

(ii) *Analysis.* (A) *Section 965(a) inclusion amounts before application of section 965(b)(5).* USS1 is a section 958(a) U.S. shareholder with respect to CFC1 and CFC2; USS2 is a section 958(a) U.S. shareholder with respect to CFC3; and USS3 is a section 958(a) U.S. shareholder with respect to CFC4. USS1's pro rata share of CFC1's section 965(a) earnings amount is $600x. Under section 965(b)(3)(A) and § 1.965–1(f)(9), USS1's aggregate foreign E&P deficit is $400x, the lesser of the aggregate of USS1's pro rata share of the specified E&P deficit of each E&P deficit foreign corporation ($400x) and the amount described in § 1.965–1(f)(9)(ii) with respect to USS1 ($600x). Under section 965(b) and § 1.965–1(b)(2), in determining its section 965(a) inclusion amount with respect to CFC1, USS1 reduces its pro rata share of the U.S. dollar amount of section 965(a) earnings amount of CFC1 by CFC1's allocable share of USS1's aggregate foreign E&P deficit. CFC1's allocable share of USS1's aggregate foreign E&P deficit is $400x, which is the product of USS1's aggregate foreign E&P deficit ($400x) and 1, which is the ratio determined by dividing USS1's pro rata share of the section 965(a) earnings amount of CFC1 ($600x), by the amount described in § 1.965–1(f)(9)(ii) with respect to USS1 ($600x). Accordingly, under section 965(b) and § 1.965–1(b)(2) (before applying section 965(b)(5) and paragraph (b) of this section), USS1's section 965(a) inclusion amount with respect to CFC1 would be $200x (USS1's pro rata share of the section 965(a) earnings amount of CFC1 of $600x reduced by CFC1's allocable share of USS1's aggregate foreign E&P deficit of $400x). Under section 965(b) and § 1.965–1(b)(2) (before applying section 965(b)(5) and paragraph (b) of this section), USS2's section 965(a) inclusion amount with respect to

CFC3 would be $300x (USS2's pro rata share of the section 965(a) earnings amount of CFC3).

(B) *Application of section 965(b)(5)—(1) Determination of E&P net surplus shareholders and E&P net deficit shareholders.* USS1 is an E&P net surplus shareholder because it would have an aggregate section 965(a) inclusion amount of $200x but for the application of section 965(b)(5) and paragraph (b) of this section. USS2 is also an E&P net surplus shareholder because it would have an aggregate section 965(a) inclusion amount of $300x but for the application of section 965(b)(5) and paragraph (b) of this section. USS3 is an E&P net deficit shareholder because it has an excess aggregate foreign E&P deficit of $100x.

*(2) Determining section 965(a) inclusion amounts under section 965(b)(5).* Under section 965(b) and paragraph (b) of this section, for purposes of determining the section 965(a) inclusion amount of a section 958(a) U.S. shareholder with respect to a deferred foreign income corporation, if, after applying § 1.965–1(b)(2), the section 958(a) U.S. shareholder is an E&P net surplus shareholder, then the U.S. dollar amount of the section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of the deferred foreign income corporation is further reduced (but not below zero) by the deferred foreign income corporation's allocable share of the section 958(a) U.S. shareholder's applicable share of the affiliated group's aggregate unused E&P deficit. USS3 is the only E&P net deficit shareholder in the USP Group, and therefore the aggregate unused E&P deficit of the USP Group is equal to USS3's excess aggregate foreign E&P deficit ($100x). The applicable share of the USP Group's aggregate unused E&P deficit of each of USS1 and USS2, respectively, is an amount that bears the same proportion to the USP Group's aggregate unused E&P deficit as the product of the group ownership percentage of USS1 and USS2, respectively, multiplied by the amount that would (but for section 965(b)(5) and paragraph (b) of this section) constitute the aggregate section 965(a) inclusion amount of USS1 and USS2, respectively, bears to the aggregate of such amounts with respect to both USS1 and USS2. Therefore, USS1's applicable share of the USP Group's aggregate unused E&P deficit is $40 ($100x × ($200x/($200x + $300x))) and USS2's applicable share of the USP Group's aggregate unused E&P deficit is $60x ($100x × ($300x/($200x + $300x))). Because USS1 is a section 958(a) U.S. shareholder with respect to only one deferred foreign income corporation, the entire $60x of USS1's applicable share of the USP Group's aggregate unused E&P deficit is treated as CFC1's allocable share of USS1's applicable share of the USP Group's aggregate unused E&P deficit, and thus USS1's section 965(a) inclusion amount with respect to CFC1 is reduced to $160x ($200x − $40x). Because USS2 is a section 958(a) U.S. shareholder with respect to only one deferred foreign income corporation, the entire $60x of USS2's applicable share of the USP Group's aggregate unused E&P deficit is treated as CFC3's allocable share of USS2's applicable share of the USP Group's aggregate unused E&P deficit, and thus USS2's section 965(a) inclusion amount with respect to CFC3 is reduced to $240x ($300x − $60x).

(C) *Aggregate foreign cash position.* Under section 965(c) and § 1.965–1(c), a section 958(a) U.S. shareholder that includes a section 965(a) inclusion amount in income is allowed a deduction equal to the section 965(c) deduction amount. The section 965(c) deduction amount is computed by taking into account the aggregate foreign cash position of the section 958(a) U.S. shareholder. Under § 1.965–1(f)(8)(i), the aggregate foreign cash position of USS1 is $100x, and the aggregate foreign cash position of USS2 is $50x.

(D) *Section 965(c) deduction amount.* The section 965(c) deduction amount of USS1 is $102x, which is equal to (i) USS1's 8 percent rate equivalent percentage (77.1428571%) of its 8 percent rate amount for USS1's 2017 year ($60x ($160x − $100x)), plus USS1's 15.5 percent rate equivalent percentage (55.7142857%) of its 15.5 percent rate amount for USS1's 2017 year ($100x). The section 965(c) deduction amount of USS2 is $174.43x, which is equal to (i) USS2's 8 percent rate equivalent percentage (77.1428571%) of its 8 percent rate amount for USS2's 2017 year ($190x ($240x − $50x)), plus USS2's 15.5 percent rate equivalent percentage (55.7142857%) of its 15.5 percent rate amount for USS2's 2017 year ($50x). Because USS3 has no section 965(a) inclusion amount, it has no section 965(c) deduction amount and therefore is not allowed a section 965(c) deduction.

*Example 2.* Application to members of a consolidated group. (i) *Facts.* The facts are the same as in paragraph (i) of *Example 1* of this paragraph (g), except that the USP Group has elected to file a consolidated return.

(ii) *Analysis*—(A) *Section 965(a) inclusion amount—(1) Single section 958(a) U.S. shareholder treatment.* Because each of USS1, USS2, and USS3 is a section 958(a) U.S. shareholder of a specified foreign corporation and is a member of a consolidated group, paragraph (e)(1) of this section applies to treat USS1, USS2, and USS3 as a single section 958(a) U.S. shareholder for purposes of section 965(b) and § 1.965–1(b)(2).

*(2) Determination of inclusion amount.* The single section 958(a) U.S. shareholder composed of USS1, USS2, and USS3 is a section 958(a) U.S. shareholder with respect to CFC1, CFC2, CFC3, and CFC4. Under § 1.965–1(b)(2), in determining USS1's section 965(a) inclusion amount, the single section 958(a) U.S. shareholder decreases its pro rata share of the U.S. dollar amount of the section 965(a) earnings amount of CFC1 by CFC1's allocable share of the aggregate foreign E&P deficit of the single section 958(a) U.S. shareholder. CFC1's allocable share of the aggregate foreign E&P deficit is $333.33x, which is the product of the aggregate foreign E&P deficit of the single section 958(a) U.S. shareholder ($500x ($400x + $100x)) and .67, which is the ratio determined by dividing its pro rata share of the section 965(a) earnings amount of CFC1 ($600x) by the amount described in § 1.965–1(f)(9)(ii) with respect to the single section 958(a) U.S. shareholder ($900x ($600x + $300x)). Therefore, USS1's section 965(a) inclusion amount with respect to CFC1 is $266.67 (its pro rata share of the section 965(a) earnings amount of CFC1 ($600) less CFC1's allocable share of the aggregate foreign E&P deficit of the single section 958(a) U.S. shareholder ($333.33x)). Similarly, under § 1.965–1(b)(2), in determining the section 965(a) inclusion amount of USS2, the single section 958(a) U.S. shareholder decreases its pro rata share of the U.S. dollar amount of the section 965(a) earnings amount of CFC3 by CFC3's allocable share of the aggregate foreign E&P deficit of the single section 958(a) U.S. shareholder. CFC3's allocable share of the aggregate foreign E&P deficit is $166.67x, which is the product of the aggregate foreign E&P deficit of the single section 958(a) U.S. shareholder ($500x) and .33, which is the ratio determined by dividing its pro rata share of the section 965(a) earnings amount of CFC3 ($300x) by the amount described in § 1.965–1(f)(9)(ii) with respect to the single section 958(a) U.S. shareholder ($900x ($600x + $300x)). Therefore, USS2's section 965(a) inclusion amount with respect to CFC3 is $133.33x (its pro rata share of the section 965(a) earnings amount of CFC3 ($300x) less CFC3's allocable share of the aggregate foreign E&P deficit of the single section 958(a) U.S. shareholder ($166.67x)).

(B) *Consolidated group aggregate foreign cash position.* Because USS1 and USS2 are members of a consolidated group, the aggregate foreign cash position of each of USS1 and USS2 is determined under paragraph (e)(3) of this section. Under paragraph (e)(3) of this section, the aggregate foreign cash position of each of USS1 and USS2 is equal to the aggregate section 965(a) inclusion amount of USS1 and USS2, respectively, multiplied by the group cash ratio of the USP Group, as determined pursuant to paragraph (f)(8) of this section. The group cash ratio of the USP Group is .50, which is the ratio of the USP Group's consolidated group aggregate foreign cash position ($200x ($50x + $100x + $50x)) and the sum of the aggregate section 965(a) inclusion amounts of all members of the USP Group ($400x ($266.67x + $133.33x)). Therefore, under paragraph (e)(3) of this section, the aggregate foreign cash positions of USS1 and USS2 are, respectively, $133.34x ($266.67x × ($200x/$400x)) and $66.67 ($133.33x × ($200x/400x)).

(C) *Section 965(c) deduction amount.* The section 965(c) deduction amount of USS1 is $177.14x, which is equal to (i) USS1's 8 percent rate equivalent percentage (77.1428571%) of its 8 percent rate amount for USS1's 2017 year ($133.33x ($266.67x − $133.34x)), plus USS1's 15.5 percent rate equivalent percentage (55.7142857%) of its 15.5 percent rate amount for USS1's 2017 year ($133.34x). The section 965(c) deduction amount of USS2 is $88.56x, which is equal to (i) USS2's 8 percent rate equivalent percentage (77.1428571%) of its 8 percent rate amount for USS2's 2017 year ($66.66x ($133.33x − $66.67x)), plus USS2's 15.5 percent rate equivalent percentage (55.7142857%) of its 15.5 percent rate amount for USS2's 2017 year ($66.67x). Because USS3 has no section 965(a)

inclusion amount, it has no section 965(c) deduction amount and therefore is not allowed a section 965(c) deduction.

■ **Par. 13.** Section 1.965–9 is added to read as follows:

**§ 1.965–9 Applicability dates.**

(a) *In general.* Sections 1.965–1 through 1.965–8 apply beginning the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to a United States person, beginning the taxable year in which or with which such taxable year of the foreign corporation ends.

(b) *Applicability dates for rules disregarding certain transactions.* Section 1.965–4 applies regardless of whether, with respect to a foreign corporation, the transaction, effective date of a change in method of accounting, effective date of an entity classification election, or specified payment described in § 1.965–4 occurred before the first day of the foreign corporation's last taxable year that begins before January 1, 2018, or, with respect to a United States person, the transaction, effective date of a change in method of accounting, effective date of an entity classification election, or specified payment described in § 1.965–4 occurred before the first day of the taxable year of the United States person in which or with which the taxable year of the foreign corporation ends.

■ **Par. 14.** Section 1.986(c)–1 is added to read as follows:

**§ 1.986(c)–1 Coordination with section 965.**

(a) *Amount of foreign currency gain or loss.* Foreign currency gain or loss with respect to distributions of section 965(a) previously taxed earnings and profits (as defined in § 1.965–1(f)(39)) is determined based on movements in the exchange rate between December 31, 2017, and the time such distributions are made.

(b) *Section 965(a) previously taxed earnings and profits.* Any gain or loss recognized under section 986(c) with respect to distributions of section 965(a) previously taxed earnings and profits is reduced in the same proportion as the reduction by a section 965(c) deduction amount (as defined in § 1.965–1(f)(42)) of the section 965(a) inclusion amount (as defined in § 1.965–1(f)(38)) that gave rise to such section 965(a) previously taxed earnings and profits.

(c) *Section 965(b) previously taxed earnings and profits.* Section 986(c) does not apply with respect to distributions of section 965(b) previously taxed earnings and profits (as defined in § 1.965–1(f)(40)).

(d) *Applicability dates.* The section applies beginning the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to a United States person, for the taxable year in which or with which such taxable year of the foreign corporation ends.

**Kirsten Wielobob,**

*Deputy Commissioner for Services and Enforcement.*

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# FEDERAL REGISTER

Vol. 83 Thursday,

No. 154 August 9, 2018


Part III

## The President

Presidential Determination No. 2018–10 of July 20, 2018—Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

Federal Register
Vol. 83, No. 154
Thursday, August 9, 2018

# Presidential Documents

**Title 3—**

## The President

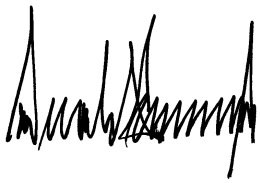
**Presidential Determination No. 2018–10 of July 20, 2018**

## Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

**Memorandum for the Secretary of State [and] the Secretary of Defense**

By the authority vested in me as President by the Constitution and the laws of the United States, and pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Colombia, that: (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary, because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) Colombia has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which includes effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register* and to notify the Congress of this determination.



THE WHITE HOUSE,
*Washington, July 20, 2018*

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# Reader Aids

**Federal Register**

Vol. 83, No. 154

Thursday, August 9, 2018

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## FEDERAL REGISTER PAGES AND DATE, AUGUST

37421–37734 ..... 1
37735–38010 ..... 2
38011–38244 ..... 3
38245–38656 ..... 6
38657–38950 ..... 7
38951–39322 ..... 8
39323–39580 ..... 9

## CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
9693 (Amended by Proc. 9771) .....37993
9771 .....37993

**Executive Orders:**
13628 (Revoked and superseded by 13846) .....38939
13716 (Revoked and superseded by 13846) .....38939
13846 .....38939

**Administrative Orders:**
Presidential Determinations:
No. 2018–10 of July 20, 2018 .....39579

**7 CFR**

**Proposed Rules:**
205 .....39376

**10 CFR**

**Proposed Rules:**
460 .....38073
830 .....38982

**12 CFR**

252 .....38460
900 .....39323
906 .....39323
956 .....39323
957 .....39323
958 .....39323
959 .....39323
960 .....39323
961 .....39323
962 .....39323
963 .....39323
964 .....39323
965 .....39323
966 .....39323
967 .....39323
968 .....39323
969 .....39323
970 .....39323
971 .....39323
972 .....39323
973 .....39323
974 .....39323
975 .....39323
976 .....39323
977 .....39323
978 .....39323
979 .....39323
980 .....39323
981 .....39323
982 .....39323
983 .....39323
984 .....39323
985 .....39323
986 .....39323
987 .....39323
988 .....39323
989 .....39323
990 .....39323
991 .....39323
992 .....39323
993 .....39323
994 .....39323
995 .....39323
996 .....39323
997 .....39323
998 .....39323
999 .....39323
1200 .....39323
1206 .....39323
1223 .....39323
1261 .....39323

**Proposed Rules:**
308 .....38080
327 .....38080
702 .....38997
1206 .....38085
1240 .....38085
1750 .....38085

**14 CFR**

23 .....38011
39 .....38014, 38245, 38247, 38250, 38657, 38951, 38953, 38957, 38959, 39326
71 .....37421, 37422, 38016, 38253

**Proposed Rules:**
39 .....37764, 37766, 37768, 37771, 38086, 38088, 38091, 38096, 39004, 39007, 39377, 39380, 39382
71 .....37773, 37774, 37776, 37778, 38098, 39384, 39386

**15 CFR**

738 .....38018
740 .....38018, 38021
743 .....38018
744 .....37423
758 .....38018
772 .....38018

**17 CFR**

232 .....38768
240 .....38768
242 .....38768
249 .....38768

**18 CFR**

154 .....38964, 38968
260 .....38964, 38968
284 .....38964, 38968

**Proposed Rules:**
45 .....37450
46 .....37450

**19 CFR**

**Proposed Rules:**
113 ....37886
181 ....37886
190 ....37886
191 ....37886

**21 CFR**

**Proposed Rules:**
15 ....38666

**22 CFR**

**Proposed Rules:**
Ch. I ....38669

**26 CFR**

1 ....38023
54 ....38212
301 ....39331

**Proposed Rules:**
1 ....39292, 39514

**29 CFR**

1910 ....39351
2590 ....38212

**32 CFR**

80 ....37433
701 ....37433

**33 CFR**

117 ....38660, 39361
165 ....38029, 38031, 38255, 38257, 38259, 38661, 39361, 39363

**Proposed Rules:**
100 ....38670
117 ....38099
165 ....37780

**38 CFR**

4 ....38663

**40 CFR**

9 ....37702
52 ....37434, 37435, 37437, 38033, 38261, 38964, 38968, 39365
63 ....38036
80 ....37735
81 ....38033, 39369
82 ....38969
180 ....37440, 38976, 39373
261 ....38262
262 ....38262
300 ....38036, 38263
302 ....37444
355 ....37444
721 ....37702

**Proposed Rules:**
52 ....38102, 38104, 38110, 38112, 38114, 39009, 39012, 39014, 39017, 39019, 39035, 39387
81 ....38114
300 ....38672
721 ....37455

**42 CFR**

411 ....39162
412 ....38514, 38575
413 ....39162
418 ....38622
424 ....37747, 39162

**Proposed Rules:**
405 ....39397
410 ....39397
411 ....39397
414 ....39397
415 ....39397
495 ....39397

**44 CFR**

64 ....38264

**Proposed Rules:**
59 ....38676
61 ....38676
62 ....38676

**45 CFR**

144 ....38212
146 ....38212
148 ....38212

**Proposed Rules:**
1607 ....38270

**47 CFR**

1 ....38039
11 ....37750
22 ....37760
400 ....38051

**48 CFR**

**Proposed Rules:**
Ch. 6 ....38669

**49 CFR**

1002 ....38266

**50 CFR**

635 ....37446, 38664
660 ....38069
679 ....37448

**Proposed Rules:**
219 ....37638
622 ....37455
648 ....39398
665 ....39037, 39039

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

**Last List August 6, 2018**

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