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Contents

Federal Register

Vol. 84, No. 120

Friday, June 21, 2019

Separate Parts In This Issue

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.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

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.

Rules and Regulations

Federal Register

Vol. 84, No. 120

Friday, June 21, 2019

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272 and 273

[FNS–2015–0038]

RIN 0584–AE41

Supplemental Nutrition Assistance Program: Student Eligibility, Convicted Felons, Lottery and Gambling, and State Verification Provisions of the Agricultural Act of 2014; Correction

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains technical corrections to the Paperwork Reduction Act section of final rule entitled ''Supplemental Nutrition Assistance Program: Student Eligibility, Convicted Felons, Lottery and Gambling, and State Verification Provisions of the Agricultural Act of 2014,'' published in the **Federal Register** on April 15, 2019.

DATES:

Effective date: This document is effective June 21, 2019.

Compliance date: Compliance with the final rule published on April 15, 2019 (84 FR 15083), and effective on June 14, 2019, is as noted in the specific regulatory provisions.

FOR FURTHER INFORMATION CONTACT: Sasha Gersten-Paal, Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service (FNS), 3101 Park Center Drive, Room 810, Alexandria, Virginia 22302, (703) 305–2507, *sasha.gersten-paal@fns.usda.gov.*

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service published a final rule on April 15, 2019, (84 FR 15083), that implements four sections of the Agricultural Act of 2014 affecting eligibility, benefits, and program administration requirements for the Supplemental Nutrition Assistance Program (SNAP). This document makes a technical correction to add the burden on SNAP individuals/households to report lottery or gambling winnings to State SNAP agencies to the burden details below based on a prior estimate in IC 0584–0064. It is estimated that a total of 27,500 participants, or 550 SNAP participants per State, will spend a total of 4,593 hours at a rate of .167 hours per response to report their substantial winnings to the State SNAP agency at a rate of $7.25 per hour for a total estimated cost of $33,296 for all respondents annually. FNS utilized the estimate of .167 hours to report a change based on a prior estimate in IC 0584–0064 on how long it takes a household to complete a simplified periodic report. FNS is not including the burden on SNAP individuals/households to reapply for benefits should they become eligible again. Since individuals/households applying for SNAP benefits are already required to report income and assets, the impact of this decision is negligible.

Need for Correction

As published, the text in the Paperwork Reduction Act section of the final rule does not include the burden on SNAP individuals/households to report lottery or gambling winnings to State SNAP agencies and requires a technical correction to the affected public, respondent type, number of responses, annual burden hours, and estimated cost to respondents.

Correction

In final rule FR Doc. 2019–07194, beginning on page 15083 in the issue of April 15, 2019, make the following correction, in the **SUPPLEMENTARY INFORMATION** section:

1. On page 15091 in the first column, revise the 13 lines of text before the heading ''Description of Costs and Assumptions'' to read as follows:

Affected public: State agencies, State gambling entities, gaming entities, households.

Regulation Section: 7 CFR 272.17.

Respondent Type: State agencies, gaming entities, households.

Estimated number of respondents: 27,750.

Total annual responses: First year 1,584,650; Ongoing 1,584,100.

Estimated annual burden hours: First year 560,814 hrs; Ongoing 192,814 hrs.

Estimated cost to respondents: First year $23,228,636; Ongoing $3,785,436.

2. On page 15092, add a table before the heading ''E-Government Act Compliance'' to read as follows:

Reg. section	Respondent type	Description of activity	Estimated number of respondents	Annual report or record filed	Total annual responses	Number of burden hours per response	Estimated total burden hours	Hourly wage rate *	Estimate cost to respondents
7 CFR 273.11(r) ...	SNAP Individuals/Households.	Report lottery r gambling winnings to state SNAP Agency.	27,500	1	27,500	0.167	4,593	$7.25	$33,296
SNAP Individual/Household Subtotal Reporting			27,500	1	27,500	....	4,593	....	33,296
7 CFR 272.17	State SNAP Agency Managers.	Establish cooperative agreements with State public agency and gaming entities **.	50	5	250	320	80,000	59.35	4,748,000
7 CFR 272.17	State Public Agency Gaming Entity Managers.	Establish cooperative agreements with State SNAP agency **.	50	1	50	320	16,000	$59.35	949,600

Reg. section	Respondent type	Description of activity	Estimated number of respondents	Annual report or record filed	Total annual responses	Number of burden hours per response	Estimated total burden hours	Hourly wage rate *	Estimate cost to respondents
7 CFR 272.17	State SNAP IT Staff.	Create a data matching system with State public agency and gaming entities **.	50	1	50	4,160	208,000	53.74	11,177,920
272.17 and 273.11(r).	State SNAP Agency Eligibility Worker.	Eligibility worker follow-up—misidentified winners.	50	260	13,000	0.667	8,671	21.45	185,993
7 CFR 272.17 and 7 CFR 273.11(r).	State SNAP Agency Eligibility Worker.	Eligibility worker follow-up—true winners.	50	460	23,000	1	23,000	21.45	493,350
7 CFR 272.17 and 7 CFR 273.11(r).	State SNAP Agency Eligibility Worker.	Eligibility worker work new applications (churn).	50	411	20,550	1	20,550	21.45	440,798
7 CFR 272.17	State Public Agency Gaming Entity Staff Member.	Input data into data matching system for use by State SNAP agency.	50	6,000	300,000	0.08	24,000	19.56	469,440
7 CFR 272.17	State SNAP IT Staff.	Maintain a data matching system with State public agency and gaming entities.	50	1	50	320	16,000	53.74	859,840
State Agency Subtotal Reporting			50	7,139	356,950	....	396,221	....	19,324,940
7 CFR 272.17	Gaming Entity Managers.	** Establish cooperative agreements with State SNAP agency.	200	1	200	320	64,000	40.12	2,567,680
7 CFR 272.17	Gaming Entity Staff Member.	Input data into data matching system for use by State SNAP agency.	200	6000	1,200,000	0.08	96,000	13.57	1,302,720
Business Subtotal Reporting			200	6,001	1,200,200	....	160,000	....	3,870,400
Individual, States and Business Reporting Grand Total Burden Estimates.			27,750	13,141	1,584,650	....	560,814	....	23,228,636

* Based on the Bureau of Labor Statistics May 2017 Occupational and Wage Statistics. The salaries of State SNAP agency managers and public gaming entity managers are considered to be ''General and Operations Managers (11–1021).'' The salaries of gaming entity managers are considered to be ''Gaming Managers (11–9071).'' The salaries of State SNAP IT Staff are considered to be ''Software Developers, Systems Software (15–1133).'' The salaries of the eligibility workers are considered to be ''Eligibility Interviewers, Government Programs (43–4061).'' The salaries of public gaming entity staff member are considered to be ''Information and Record Clerks, All Other (43–4199).'' The salaries of gaming entity staff member are considered to be ''Gaming Cage Workers (43–3041).'' (*http://www.bls.gov/oes/home.htm*).

** These are only first year costs and are next expected to re-occur annually.

Dated: June 5, 2019.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2019–12910 Filed 6–20–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1423

[Doc. No. AMS–FTPP–18–0085]

Delivery and Shipping Standards for Cotton Warehouses

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations that specify the storage and handling of cotton at warehouses approved by the Commodity Credit Corporation (CCC). The amendment modifies the weekly accounting and reporting for cotton bales made available for shipment to assure compliance with CCC requirements. This rule also revises the regulations to reflect transfer of administrative oversight of warehouse programs and activities from the Farm Service Agency (FSA) to the Agricultural Marketing Service (AMS).

DATES: Effective June 24, 2019.

FOR FURTHER INFORMATION CONTACT: Dan Schofer, Cotton Program Manager, Warehouse Commodity Management Division, AMS Fair Trade Practices Program, USDA, 1400 Independence Ave. SW, Stop 3061, Room 2555-South, Washington, DC 20250–3061; email: *dan.schofer@ams.usda.gov*, or telephone: 202–690–2434.

SUPPLEMENTARY INFORMATION: The Commodity Credit Corporation Charter Act (15 U.S.C. 714) authorizes CCC to enter into storage agreements with private individuals and companies to allow warehouse operators to store commodities owned by CCC or pledged as security to CCC for marketing assistance loans. Warehouse operators who enter into these agreements must comply with regulations established by the United States Department of Agriculture (USDA) at 7 CFR part 1423—Commodity Credit Corporation Approved Warehouses. Section 1423.11 specifies delivery and shipping standards for cotton warehouses. Under § 1423.11, cotton warehouse operators are required to deliver stored cotton without unnecessary delay. To assure delivery without unnecessary delay, warehouse operators are required to maintain an inventory of bales made available for shipment (BMAS) of at least 4.5 percent of the warehouse's storage capacity in effect during the relevant week of shipment. Warehouse operators are required to report the number of BMAS to CCC on a weekly basis.

Previously, § 1423.11 of the regulations allowed bales made available for shipment by the warehouse operator but not picked up (BNPU) by the shipper to count for up to two reporting weeks when calculating and reporting BMAS for the reporting week. This rule revises the definition of BMAS in § 1423.11(b) by allowing BNPU to be counted for only one week, with BMAS to include only bales actually shipped or not picked up for that reporting week. Under the revised regulations, the warehouse operator can meet the 4.5% cotton flow requirement by averaging the BMAS for the current reporting week with either the BMAS for the previous week or the BMAS for following week. Under revised § 1423.11(a), CCC will use a two-week rolling average of BMAS to determine a warehouse operator's compliance with the minimum cotton flow rate of 4.5% of applicable storage capacity. This change is intended to give cotton warehouse operators the flexibility to address real-time scheduling changes and market demands faced by cotton merchants and shippers.

For example, a cotton warehouse operator has scheduled 4.5% of the warehous's applicable storage capacity to be available for shipment for several consecutive weeks. The week before a load is scheduled to be picked-up, a shipper requests to change its load out date to an earlier date in the preceding week, for an amount representing 0.25% of the warehouse's applicable storage capacity. If the warehouse operator has that specific load (0.25% of licensed capacity) already staged for a scheduled delivery the following week, that load could be picked up earlier—in the week preceding the original load out date. Without using a two-week rolling average and without making any additional bale adjustments, the warehouse operator would be considered to have delivered cotton without unnecessary delay for the first week because its BMAS is 4.75%, which is greater than the required 4.5%. However, the warehouse operator would not be considered to have delivered cotton without unnecessary delay during the second week because its BMAS is 4.25%, which is less than he required 4.5%. In this example, the option to calculate BMAS compliance using the rolling average of the reporting week and the week preceding the reporting week would result in a determination by CCC that the cotton warehouse operator is in compliance with a BMAS of 4.5% for the reporting week.

In another example, a cotton warehouse operator schedules 4.5% of the applicable storage capacity for delivery in each of three consecutive weeks. During the first week, the cotton warehouse operator actually makes available for shipment 6.0% of the applicable storage capacity. During the second week, the cotton warehouse operator only makes 2.0% of applicable storage capacity available for shipment. During the third week, the cotton warehouse operator makes 7.0% of applicable storage capacity available for shipment. In this example, the cotton warehouse operator is considered to have delivered cotton without unnecessary delay during the first and the third weeks. During the second week however, the CCC can use the two-week rolling average of either the applicable week and the immediately preceding week, which results in an average BMAS of 4.0%, or the two-week rolling average of the applicable week and the immediately succeeding week, which results in an average BMAS of 4.5%, to make its compliance determination for the second week. Using the two-week rolling average of the second and third week to calculate the BMAS for the second week allows the CCC to consider the cotton warehouse operator to have delivered cotton without unnecessary delay for that second week because the 4.5% average met the cotton flow requirement.

This rule continues to require warehouse operators to report their BMAS each week based upon the revised definition of BMAS. CCC will determine compliance on the basis of an individual reporting week, or if needed, use one of the optional rolling average calculations of BMAS for two consecutive reporting weeks. If CCC uses the average of the applicable week and the immediately succeeding week, CCC will determine compliance for the applicable week after it receives the data from the immediately succeeding week. These options allow cotton warehouse operators to meet the cotton flow requirements of the regulation while being flexible to the needs of the shipping and merchant industries.

Finally, this rule revises § 1423.2 to reflect the transfer of responsibility for administration of CCC warehouse programs and activities from FSA to AMS in 2018. Corresponding changes are made to § 1423.3, removing the definition for the Kansas City Commodity Office (KCCO) from the list of definitions, and to §§ 1423.7(d), 1423.8(b), and 1423.13, replacing references to FSA and KCCO with references to AMS.

A proposed rule concerning this action was published in the **Federal Register** on April 5, 2019 (84 FR 13562), and a 30-day comment period ending May 6, 2019, was provided to allow interested persons to respond to the proposal. Three comments were received.

All three comments, including one comment submitted on behalf of eight cotton industry associations, expressed support for the proposed changes. Commenters explained that the proposed changes to BMAS accounting should have a positive effect on the flow of U.S. cotton into the market and improve shipping and tracking efficiency.

One commenter asked why other recommendations from the industry at a National Cotton Council meeting were not addressed in the proposed rule. One recommendation pertained to the revision of the Cotton Storage Agreement (Form CCC–823) (CSA), which must be signed and complied with by warehouses storing CCC-interest cotton. The other recommendation pertained to changes to the licensing agreement between USDA and EWR, Inc., the licensed provider of electronic warehouse receipts for cotton.

The proposed rule explained that conforming changes to the CSA would be made to reflect the regulatory revisions in the proposed rule, meaning the change in reporting BMAS. The other recommendations noted by the commenter refer to actions outside the scope of this final rule. Additional changes to the CSA are being made to reflect the transfer of administrative oversight for the program from FSA to AMS. Additionally, AMS has been working closely with the National Cotton Council to address industry recommendations regarding staging orders, shipping orders, and shipping update files contained within EWR provider services. AMS addresses compliance in the Cotton Storage Agreement between CCC and individual warehouse operators. AMS and the National Cotton Council have agreed to provide notices to all cotton warehouses, shippers, and merchants regarding the regulatory changes in this final rule and the conforming changes to the CSA. EWR will notify its customers separately of any EWR programming changes and new requirements.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

Executive Orders 12866 and 13771, and Final Regulatory Flexibility Analysis

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866 and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), CCC has considered the economic effect of this action on small entities and has determined that this rule does not have a significant economic impact on a substantial number of small business entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

Currently, there are 326 CCC-approved warehouses that store cotton. CCC estimates that approximately 50 CCC-approved warehouses would be considered small businesses, according to standards established by the U.S. Small Business Administration (13 CFR part 121), which identifies small business size by average annual receipts or by the average number of employees at a firm.

Sizes of cotton warehouses vary in size as well as business type, including small, independent country warehouses, small to large sized warehouses owned by cooperatives of producers, and small to large sized warehouses owned by corporate shippers/merchants. The requirements that warehouse operators must deliver stored cotton without unnecessary delay and make at least 4.5 percent of their applicable storage capacity available for shipment apply to all sizes of warehouses. Thus, the effects of this rule are not disproportionately greater or lesser for small businesses than for large businesses.

E-Gov

USDA is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes. Accordingly, CCC offers options for companies requesting service to do so electronically.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A warehouse operator may resolve any claim regarding noncompliance with the shipping standards by any entity other than CCC, such as a merchant or shipper, in a court of competent jurisdiction or through mutually agreed upon arbitration procedures. CCC does not have authority to prohibit one entity from filing suit against another in a court of law.

When addressing compliance matters with CCC, the warehouse operator may seek reconsideration of enforcement decisions after demonstrating that corrective actions have been taken.

Paperwork Reduction Act

The cotton warehouse information collection required in this final rule is the weekly reporting of BMAS by cotton warehouses. BMAS is reported through the EWR system, to which AMS has access. Authority to collect the information gathered by EWR, Inc., is provided in Public Law 107–171, the Farm Security and Rural Investment Act of 2002, which also exempts the information collection from the Paperwork Reduction Act (44 U.S.C. Chapter 35). The regulatory changes in this final rule will not change the burden associated with reporting BMAS, which must be reported weekly. This rule only changes the way CCC accounts for the information collected and uses it to determine compliance with cotton delivery and shipping requirements.

Background

AMS administers the CCC-approved warehouse program for CCC. This responsibility includes entering into contracts for the storage and handling of CCC-interest commodities with warehouses. The operators of those approved warehouses are required to comply with CCC regulations, which include reporting information about the stored commodities to CCC. The specific requirements that operators of approved warehouses must meet are specified in the regulations at 7 CFR part 1423—Commodity Credit Corporation Approved Warehouses—and in the signed storage agreement between CCC and the warehouse operator for each type of commodity.

Operators of CCC-approved cotton warehouses are currently required to report BMAS, among other data, to CCC on a weekly basis. Prior to the revisions in this rule, bales that were scheduled and ready for delivery in a previous week, but not picked up by the shipper, and for which another shipping date had not been established, remained available for loading and could be counted toward BMAS for up to two weeks. This rule clarifies that bales scheduled and ready for delivery during a specific week but not picked up by the end of that reporting week can only be reported as BMAS for the week that such bales were made available for shipment. The National Cotton Council, on behalf of the U.S. cotton industry, requested this change in order to increase the cotton flow rate to domestic and foreign manufacturers, to more quickly respond to domestic and international market needs, and to optimize performance by approved cotton warehouse operators. This change is being made to simplify the calculation of BMAS so that certain bales do not need to be accounted for beyond the applicable reporting week. The rule revises the accounting for BNPU in the weekly report to CCC. It does not change any warehouse tariffs or fees.

A corresponding change is also made to CCC's Cotton Storage Agreement (Form CCC–823). The storage agreement between CCC and the cotton warehouse operator specifies the requirements the warehouse operator must meet for storing and handling CCC-interest cotton. The standard cotton storage agreement form is available on the USDA website at: *https://forms.sc.egov.usda.gov//efcommon/eFileServices/eForms/CCC823.PDF.* Additional changes to the regulations reflect the transfer of administrative responsibility for warehouse management from FSA to AMS.

The revisions in this rule are intended to improve the efficiency of cotton flow from U.S. producers and cotton warehouses to shippers, and ultimately to cotton manufacturers, by more accurately reporting cotton that is available for shipment. Before the revisions in this final rule, accounting for certain bales that may have been scheduled and ready for shipment but were not picked up for two weeks or more, potentially inflated BMAS calculations. This rule change is meant to more accurately reflect how the cotton industry actually makes bales available for shipment each week. Availability and consistent supply of cotton are crucial for the U.S. cotton industry in order to compete with other cotton producing nations. Having accurate information about bales made available for shipment contributes to more efficient and effective marketing of U.S. cotton.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) requires the publication of a substantive rule 30 days before its effective date, unless the rule grants or recognizes an exemption or relieves a restriction (5 U.S.C. 553(d)(1)), or the agency finds good cause for excepting the rule from the 30-day notice requirement (5 U.S.C. 553(d)(3)). USDA finds that it is unnecessary and contrary to the public interest to postpone the effective date of this rule for 30 days after publication in the **Federal Register**. The revisions herein represent a relaxation of the regulations and provide additional flexibilities to the cotton industry, which recommended the changes. The revisions are necessary prior to the beginning of the 2019 cotton shipping season, which begins July 1 in south Texas. Interested parties were invited to comment on the proposed rule, and three comments were received, all of which supported the proposed actions. A comment in behalf of eight cotton industry associations of producers, ginners, warehouse operators, shippers, marketers, and textile manufacturers urged USDA to finalize the revision in time for the 2019 shipping season. It would be contrary to the public interest to unnecessarily delay implementation of this final rule, thereby potentially disrupting the orderly shipping of cotton as required by CCC. Moreover, postponing the effective date of the final rule for 30 days is unnecessary to allow for adjustment of behavior because none is required of regulated entities, who will continue to file the same weekly BMAS reports they have in the past. Therefore, good cause exists for making this rule effective 1 day after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1423

Agricultural commodities, Cotton, Honey, Oilseeds, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 1423 is amended as follows:

PART 1423—COMMODITY CREDIT CORPORATION APPROVED WAREHOUSES

■ 1. The authority citation for part 1423 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c.

■ 2. Revise § 1423.2 to read as follows:

§ 1423.2 Administration.

On behalf of CCC, the Agricultural Marketing Service (AMS) will administer this part under the supervision of the AMS Administrator.

§ 1423.3 [Amended]

■ 3. Amend § 1423.3 by removing the definition for ''KCCO.''

■ 4. Amend § 1423.7 by removing '', or'' at the end of paragraph (c) and adding ''; or'' in its place and revising paragraph (d) to read as follows:

§ 1423.7 Net worth alternatives.

* * * * *

(d) Other alternative instruments and forms of financial assurance as the AMS Administrator determines appropriate to secure the warehouse operator's compliance with this section.

■ 5. Amend § 1423.8 by revising paragraph (b) to read as follows:

§ 1423.8 Approval or rejection.

* * * * *

(b) CCC will notify the warehouse operator of rejection under this part in writing. The notification will state the causes for rejection. CCC will reconsider a warehouse for approval when the warehouse operator establishes that the reasons for rejection have been remedied or requests reconsideration of the action and presents to the Director, Warehouse and Commodity Management Division, AMS, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request with the AMS Administrator. Appeals shall be as prescribed in part 780 of this title.

■ 6. Amend § 1423.11 by revising paragraphs (a)(2) and (b)(1) to read as follows:

§ 1423.11 Delivery and shipping standards for cotton warehouses.

(a) * * *

(2) Be considered to have delivered cotton without unnecessary delay if the warehouse operator has made available for shipment at least 4.5 percent of its applicable storage capacity in effect, measured as the bales made available for shipment (BMAS):

(i) During the relevant week of shipment; or

(ii) Calculated as the two-week, rolling average of the BMAS for the relevant week of shipment and the BMAS for the immediately preceding week; or

(iii) Calculated as the two-week, rolling average of the BMAS for the relevant week of shipment and the BMAS for the immediately succeeding week.

(b) * * *

(1) BMAS during such week is defined as any cotton bales that have been delivered or are scheduled and ready for delivery but not picked up during such week;

* * * * *

■ 7. Amend § 1423.13 by revising paragraph (a) to read as follows:

§ 1423.13 Appeals, suspensions, and debarment.

(a) After initial approval, warehouse operators may request that CCC reconsider adverse actions when the warehouse operator establishes that the reasons for the action have been remedied or requests reconsideration of the action and presents to the Director, Warehouse and Commodity Management Division, AMS, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request to the AMS Administrator. Appeals shall be as prescribed in part 780 of this title, and under such regulations the warehouse operator shall be considered as a ''participant.''

* * * * *

Dated: June 14, 2019.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2019–13089 Filed 6–20–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 3550 and 3555

RIN 0575–AD13

Single Family Housing Direct and Guaranteed Loan Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency) published a proposed rule on August 31, 2018 to amend its regulations for the direct and guaranteed single family housing loan and grant programs. Through this action, RHS finalizes the rule as final based on public comments, but with a revision to the definition of rural area to cite the statute which defines rural area and with a technical correction to the suspension or debarment requirement.

DATES: Effective on July 22, 2019, except for the amendment to § 3550.63 which is effective on August 5, 2019.

FOR FURTHER INFORMATION CONTACT: Shannon Chase, Finance and Loan Analyst, Single Family Housing Direct Loan Origination Branch, USDA Rural Development, STOP 0783, 1400 Independence Ave. SW, Washington, DC 20250–0783, Telephone: (515) 305–0399. Email: *Shannon.chase@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In order to improve the delivery of the single family housing loan programs and to promote consistency among the programs when appropriate, RHS will make the following revisions to 7 CFR parts 3550 and 3555.

(1) Revising the definition of rural area in § 3550.10 to refer to the definition found in section 520 of the Housing Act of 1949, as amended; and very low-, low-, and moderate-income definitions to allow for a two-tier income limit structure (income banding) for the single family housing direct loan and grant programs.

The revision to the rural area definition is technical in nature, as the Agency's definition is already derived from the definition in section 520 of the Housing Act of 1949, as amended. The revision will minimize the need for the Agency to update its regulation and Handbooks in response to future changes to section 520 of the Housing Act of 1949, as amended.

The revisions to the income definitions will help minimize the impact of varying minimum wages established by the states and territories and the observed disconnect between minimum wages and the low median income in many areas. Under current regulations, the income of a household with two people earning the minimum wage would exceed the low-income eligibility limit in 39 to 93 percent of the counties in 16 states and territories. In other words, under current regulations and income limits, the income from a two-person household earning minimum wage may be considered too high to qualify for a direct loan.

In accordance with Section 501(b)(4) of the Housing Act of 1949 (42 U.S.C. 1471(b)(4)), the terms ''low income families or persons'' and ''very low-income families or persons'' mean those families and persons whose income do not exceed the respective levels established for low-income families and very low-income families under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). The income levels in the Housing Act of 1937 are generally established by the U.S. Department of Housing and Urban Development (HUD). RHS currently uses the HUD income levels without income banding. However, HUD programs authorized by the Housing Act of 1937 focus on renting as opposed to home purchases, which contributes to the disqualification of households with minimum wage earners as described above. The Agency has been operating a pilot in 23 states to test the alternate methodology of a two-tier income limit structure to address this issue.

For the pilot, the Agency used the authority in 42 U.S.C. 1437a(b)(2)(D), which provides for HUD and USDA to consult on income ceilings for rural areas, taking into account the types of programs that will use the income ceilings as well as subsidy characteristics. Based on this authority, the Agency used a two-tier income limit structure for the single family housing programs which bands together 1–4 person households using the 4-person income level set by HUD, and 5–8 person households using the 8-person income level established by HUD. The pilot has successfully served more borrowers, providing meaningful homeownership opportunities to those who would otherwise be denied. The Agency will use income banding to determine all limits for very low-income, low-income, moderate-income, 38 year term and adjusted median income.

Such banding has successfully been used to establish the moderate income limits in the guaranteed single family housing loan program for years (the term ''moderate income'' is not defined in Section 501(b)(4) of the Housing Act of 1949 and therefore is not restricted in the same way as ''very low-'' and ''low-income'').

The Agency has consulted with HUD, and both agencies agree that the two-tier income limit approach is suitable for the USDA single family housing loan and grant programs. The impacted income definitions in § 3550.10 are revised to state that the respective limit is ''an adjusted income limit developed in consultation with HUD''. The two-tier income limits will be published annually via a Procedure Notice and posted to the Agency website at *https://www.rd.usda.gov/files/RD-DirectLimitMap.pdf.*

The Agency is revising the definition of moderate income so that it does not exceed the moderate income limit established for the guaranteed single family housing loan program. The Agency will publish a specific limit in the program handbook.

The revisions to the income definitions will ultimately allow the Agency and HUD to account for the differences between renting (which is the focus of HUD and 42 U.S.C. 1437 *et seq.*) and owning a home. This action will improve program availability to the intended recipients.

(2) Revising § 3550.54(d) to remove the requirement that net family assets be included in the calculation of repayment income.

Currently, net family assets are considered for determining annual income, down payment purposes, and repayment income. The Agency will exclude net family assets from repayment income calculations because repayment income focuses on the income of those who sign the promissory note, whereas net family assets considers other family members. Net family assets will still be considered for annual income and down payment purposes.

The Agency is revising the regulation so that the list of net family assets considered for annual income and down payment purposes would exclude amounts in voluntary retirement accounts such as individual retirement accounts (IRAs), 401(k) plans, Keogh accounts, and the cash value of life insurance policies.

In addition, the Agency is excluding the value of tax advantaged college savings plans, the value of tax advantaged health or medical savings or spending accounts, and other amounts deemed by the Agency, from net family assets considered in the determination of annual income and down payments.

Excluding these types of assets when considering annual income or down payment requirements will help safeguard the assets for their intended purposes and promote a healthy financial support system for the household when it does incur education and health care costs, or enters retirement.

The Agency is also removing from net family assets the value, in excess of the consideration received, for any business or household assets disposed of for less than the fair market value during the 2 years preceding the income determination. This change recognizes that it is not productive or meaningful to consider assets which have been disposed of in the past.

Lastly, the Agency is making two minor changes primarily for consistency between the direct and guaranteed single family housing loan regulations. The Agency will include in net family assets any equity in capital investments for consistency with the guaranteed single family housing loan regulations, as well as obtaining a full understanding of an applicant's financial condition before making a decision on a loan. In the exclusions from net family assets, the Agency will change the language from ''American Indian trust land'' to ''American Indian restricted land''. The terms ''trust land'' and ''restricted'' are often used interchangeably, and the revision is for consistency between the direct and guaranteed programs, and will not result in any substantive changes.

(3) Revising the methodology used to determine the area loan limits in § 3550.63(a) to use a percentage(s), as determined by the Agency, of the applicable local HUD section 203(b) limit.

The revisions to the area loan limit methodology will streamline the determination of area loan limits and improve the reliability of the data set used to establish the area loan limits. The current process to annually establish the area loan limits uses a data set based on overly restrictive nationalized parameters and requires a significant amount of staff time on all levels (field, state, and national). Currently, § 3550.63(a) allows for two methods that a State Director may use to establish area loan limits. The first option is based on the cost to construct a modest home plus the market value of an improved lot based on recent sales data. The second option allows the State Director to use State Housing Authority (SHA) limits as long as the limit is within 10 percent of the cost data plus the market value of the improved lot. This second option is rarely used because the SHA limits are usually not within the 10 percent limit.

For the first option, the most widely used option, the Agency contracts with a third party that provides building cost data for real estate valuations to obtain construction costs, but those construction costs are based on parameters for homes that do not reflect the varied modest homes available to program borrowers. In addition, obtaining the market value is a time-consuming process relying on collecting and updating recent home sales data, which is particularly difficult given Agency staff appraiser shortages over the past few years.

The Agency has been operating a pilot to test the alternate methodology of basing the area loan limits on a percentage of the FHA Forward One-Family mortgage limits (the HUD 203(b) limit). Under the pilot, 80 percent of the HUD 203(b) limit was used to establish the area loan limits in selected pilot states. The 80 percent was established based on a side-by-side, county-by-county comparison of the Agency's existing area loan limits to various percentages of the HUD 203(b) limits. It was determined that 80 percent of the HUD 203(b) limits was adequate to cover the loan amounts in the majority of states (vs. lower percentages of 60–70 percent).

While the pilot states generally experienced increases in their area loan limits, the increases were not significant, in part because an applicant's qualification amount continues to be limited to repayment ability, property eligibility criteria (for example, properties financed through the program are currently subject to 2,000 square feet), and other factors. Average loan amounts in the pilot states increased 13.4 percent from Fiscal Year 2015 to 2017, while average loan amounts in the non-pilot states have increased 5.4 percent during the same period.

The Agency believes the slightly higher percent increase in the pilot states is acceptable for several reasons. For example, the alternate methodology makes new construction under the program more feasible, and new construction can improve a rural community's housing stock and economy. In addition, this action will save the Agency more than $70,000 each year (which is the cost to obtain the construction cost data set from a nationally recognized residential cost provider). A significant amount of staff time will also be saved.

The Agency will determine the percentage(s) based on housing market conditions and trends, and publish the percentage(s) in the program handbook. The resulting area loan limits will be posted to the Agency website at *https://www.rd.usda.gov/files/RD-SFHAreaLoanLimitMap.pdf.* The change allows the Agency to adjust the percentage(s) as necessary in order to be responsive to housing market conditions and trends.

(4) Revising § 3550.68(b)(2) to convert a borrower currently receiving payment assistance method 1 to payment assistance method 2 should that borrower receive a subsequent loan. The change is related to the income banding proposal, as payment assistance method 2 will more closely align the subsidy provided with what is actually needed for affordability. The change avoids potentially over-subsidizing borrowers using payment assistance method 1 under the income banding system and reduces the potential for negative impacts to the program's subsidy rate. In addition, RHS is making a technical correction to the proposed regulatory text, which stated that the conversion would occur if a borrower ''received'' a subsequent loan, implying that the conversion to payment assistance method 2 would apply retroactively and only apply to loans already received. This meaning is not supported by the preamble to the proposed rule. The final regulatory text will correctly state that the conversion will occur if a borrower ''receives'' a subsequent loan, to ensure that the conversion applies to any future loan.

(5) Revising the definition of low-income in § 3555.10 for the single family housing guaranteed loan program to allow for the two-tier income limit structure (income banding) discussed above. The two-tier income limits will be published annually via a Procedure Notice and posted to the Agency website at *https://www.rd.usda.gov/files/RD-GRHLimitMap.pdf.*

The single family housing guaranteed loan program provides guarantees to lenders who make loans to low- and moderate-income borrowers in rural areas who are without sufficient resources or credit to obtain a loan without the guarantee. As mentioned, the guaranteed loan program already uses the two-tier income limit structure for moderate income limits. This change would allow the two-tier income limit structure to be used for determining the very low- and low-income limits in the guaranteed loan program.

(6) Making a technical correction to the suspension or debarment requirement in § 3550.53(f) to refer to 2 CFR parts 180 and 417, instead of 7 CFR 3017 which is obsolete.

II. Discussion of Relevant Public Comments Received on August 31, 2018, Proposed Rule

The 60-day comment period for the proposed rule published at 83 FR 44504 ended on October 30, 2018. A total of 30 comments were received. Commenters included affordable housing nonprofit organizations, the National Association of Home Builders, the National Association of Realtors, the National Council of State Housing Agencies, the National Rural Housing Coalition, the Rural Community Assistance Corporation and the public.

Comments on the two-tier income limit structure (income banding). The Agency received several comments on the two-tier income limit structure, and whether that change will limit the program's ability to serve lower income borrowers, potentially allowing limited subsidy and loan dollars to go to higher income households. One commenter noted that while appropriation levels for the program have been modestly increased over time, these increases are not enough to meet the need, before expanding the pool of income eligible applicants through two-tier income limits.

The Agency also received a few comments about possible contradictions between the two-tier income limits and other HUD programs such as Self-Help Homeownership Opportunity Program (SHOP), Home Investment Partnerships program (HOME), and/or Community Development Block Grant (CDBG).

Agency Response: The program is subject to a statutory requirement in section 502(d) of the Housing Act of 1949, as amended, which requires that (1) not less than 40 percent of the funds approved in appropriation Acts for use under this section shall be set aside and made available only for very low-income families or persons; and (2) not less than 30 percent of the funds allocated to each State under this section shall be available only for very low-income families or persons. This requirement serves to ensure that proportionate funding is available each year for very low-income households. In turn, the revision seeks to expand the program to account for areas where households with members earning minimum wage may currently be considered too high to qualify for a direct loan. Based on the pilot and other analysis, the Agency believes the income banding will help make loans available to households (such as those earning minimum wage) that were incongruously excluded from the program due to reliance on limits not tailored for the program's intended recipients. The Agency does not believe the changes will open the program to higher income households at the expense of lower income households, and adopts the changes as proposed.

The Agency has consulted with HUD regarding the implications of differing income limits within its programs, and the Agency's two-tier income limits. HUD has not taken a position on changing income limits for SHOP, HOME, CDBG or other HUD administered programs.

Comments on revising the methodology used to determine the area loan limits. The Agency received a couple of comments which did not support revising the methodology used to determine the area loan limits to use a percentage of the applicable local HUD section 203(b) limit. The commenters noted that the 203(b) loan limits are not based on housing sale prices except for high cost counties and would not be their preferred basis for determining loan limits for this program. While they generally do not object to changing the method, their concern was the proposed change will lead to larger loan sizes, and subsidy going to fewer borrowers with larger loans leading to less total loans and subsidy for lower-income borrowers.

Agency Response: It is the Agency's expectation that by using a reasonable percentage(s) of the HUD section 203(b) limit, rather than the full limits, the Agency's respective area loan limits will reflect local, rural housing costs in a reasonable and consistent manner. Under the revision, the Agency will have the flexibility to establish a percentage(s) which will be responsive to housing market conditions and trends. These considerations, in conjunction with the expected cost savings to the Agency, suggest that this will be the most efficient and reasonable method, and the proposal is adopted without change.

Comments on business or household assets disposed of for less than fair market value. The Agency received a couple of comments regarding the change which would no longer consider the value of business or household assets disposed of for less than fair market value during the previous two years, in excess of the consideration received, as net family assets. The commenters believe the existing policy helps protect the Agency from potential fraud, and that applicants selling or transferring assets for less than market value may be doing so to reduce their required contribution toward the purchase of the home, or to qualify for payment assistance.

Agency Response: The change recognizes that it is not productive or meaningful to consider assets which have been disposed of in the past. The percentage of applicants who have documented that they disposed of assets for less than the market value in the preceding two years is nominal. When an applicant has disposed of assets in this manner, the market value of the asset in question generally does not exceed the applicable asset threshold for eligibility or down payment requirements. The proposal is adopted without change.

Comments on converting borrowers from payment assistance method 1 to method 2 should that borrower receive a subsequent loan. The Agency received a comment regarding whether the Agency is concerned with the amount of subsidy per household, or the total amount of subsidy awarded in any given fiscal year; and whether the Agency expects the total number of loans and amount of subsidy to increase.

Agency Response: The Agency is watchful of subsidy levels on both a per household and cumulative basis. Standardized payment assistance formulas and periodic reviews of the households' pertinent financial information help to ensure that households do not receive more than the maximum subsidy allowed, which in turns controls the amount of cumulative subsidy that is provided. In addition, this revision will only impact existing borrowers currently under payment assistance method 1, who receive subsequent loans. It is expected that this revision will reduce the potential for a negative impact on the program's subsidy rate, while aligning future subsidy with what the applicable households need for affordability. Therefore, the Agency does not expect a significant increase in the number of loans or amount of subsidy because of this revision, and the proposal is adopted without change.

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12866

The Office of Management and Budget (OMB) has designated this rule as not significant under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule, while affecting small entities, will not have an adverse economic impact on small entities. This rule does not impose any significant new requirements on program recipients nor does it adversely impact proposed real estate transactions involving program recipients as the buyers.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the document related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This Executive order imposes requirements in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175.

Programs Affected

The following programs, which are listed in the Catalog of Federal Domestic Assistance, are affected by this final rule: Number 10.410, Very Low to Moderate Income Housing Loans (specifically the section 502 direct and guaranteed loans), and Number 10.417, Very Low-Income Housing Repair Loans and Grants (specifically the section 504 direct loans and grants).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection activities associated with this rule are covered under OMB Number: 0575–0172. This final rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act, 44 U.S.C. 3601 *et seq.,* to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Non-Discrimination Policy

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, Washington, DC 20250–9410;

(2) *Fax:* (202)690–7442; or

(3) *Email: program.intake@usda.gov.*

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List of Subjects in 7 CFR Parts 3550 and 3555

Administrative practice and procedure, Environmental impact statements, Fair housing, Grant programs-housing and community development, Housing, Loan programs-housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, chapter XXXV, title 7 of the Code of Federal Regulations, is amended as follows:

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A—General

■ 2. Section 3550.10 is amended by revising the definitions of ''low income'', ''moderate income'', ''rural area'', and ''very low-income'' to read as follows:

§ 3550.10 Definitions.

* * * * *

Low income. An adjusted income limit developed in consultation with HUD under 42 U.S.C. 1437a(b)(2)(D).

* * * * *

Moderate income. An adjusted income that does not exceed the moderate income limit for the guaranteed single family housing loan program authorized by Section 502(h) of the Housing Act of 1949, as amended.

* * * * *

Rural area. An area defined in section 520 of the Housing Act of 1949, as amended.

* * * * *

Very low-income. An adjusted income limit developed in consultation with HUD under 42 U.S.C. 1437a(b)(2)(D).

* * * * *

Subpart B—Section 502 Origination

■ 3. In § 3550.53, paragraph (f) is revised to read as follows:

§ 3550.53 Eligibility requirements.

* * * * *

(f) *Suspension or debarment.* Applications from applicants who have been suspended or debarred from participation in Federal programs will be handled in accordance with 2 CFR parts 180 and 417.

* * * * *

■ 4. In § 3550.54:

■ a. Revise the first sentence of paragraph (d) introductory text;

■ b. Revise paragraphs (d)(1) introductory text and (d)(1)(i);

■ c. Revise paragraphs (d)(1)(iv) through (vi);

■ d. Remove paragraph (d)(1)(vii);

■ e. Revise paragraphs (d)(2)(i) and (v); and

■ f. Add paragraphs (d)(2)(vi) through (x).

The revisions and additions read as follows:

§ 3550.54 Calculation of income and assets.

* * * * *

(d) *Net family assets.* Income from net family assets must be included in the calculation of annual income. * * *

(1) Net family assets include, but are not limited to:

(i) Equity in real property or other capital investments, other than the dwelling or site;

* * * * *

(iv) Stocks, bonds, and other forms of capital investments that are accessible without retiring or terminating employment;

(v) Lump sum receipts such as lottery winnings, capital gains, inheritances; and

(vi) Personal property held as an investment.

(2) * * *

(i) Interest in American Indian restricted land;

* * * * *

(v) Amounts in voluntary retirement plans such as individual retirement accounts (IRAs), 401(k) plans, and Keogh accounts (except at the time interest assistance is initially granted);

(vi) The value of an irrevocable trust fund or any other trust over which no member of the household has control;

(vii) Cash value of life insurance policies;

(viii) The value of tax advantaged college savings plans (529 plan, Coverdell Education Savings Account, etc.);

(ix) The value of tax advantaged health or medical savings or spending accounts; and

(x) Other amounts deemed by the Agency not to constitute net family assets.

■ 5. Effective on August 5, 2019, in § 3550.63, paragraph (a)(1) is revised to read as follows:

§ 3550.63 Maximum loan amount.

* * * * *

(a) * * *

(1) The area loan limit is the maximum value of the property RHS will finance in a given locality. This limit is based on a percentage(s) of the applicable local HUD section 203(b) limit. The percentage(s) will be determined by the Agency and published in the program handbook. The area loan limits will be reviewed at least annually and posted to the Agency website.

* * * * *

■ 6. In § 3550.68, paragraph (b)(2) is revised to read as follows:

§ 3550.68 Payment subsidies.

* * * * *

(b) * * *

(2) If a borrower receiving payment assistance using payment assistance method 1 receives a subsequent loan, payment assistance method 2 will be used to calculate the subsidy for the initial loan and subsequent loan.

* * * * *

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

■ 7. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart A—General

■ 8. Section 3555.10 is amended by revising the definition of ''low-income'' to read as follows:

§ 3555.10 Definitions and abbreviations.

* * * * *

Low-income. An adjusted income limit developed in consultation with HUD under 42 U.S.C. 1437a(b)(2)(D).

* * * * *

Dated: June 12, 2019.

Bruce W. Lammers,

Administrator, Rural Housing Service.

[FR Doc. 2019–12988 Filed 6–20–19; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 52

[Docket ID OCC–2018–0032]

RIN 1557–AE39

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket ID R–1618]

RIN 7100–AF12

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 304

RIN 3064–AE82

Reduced Reporting for Covered Depository Institutions

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the agencies) are issuing a final rule to implement section 205 of the Economic Growth, Regulatory Relief, and Consumer Protection Act by expanding the eligibility to file the agencies' most streamlined report of condition, the FFIEC 051 Call Report, to include certain insured depository institutions with less than $5 billion in total consolidated assets that meet other criteria, and establishing reduced reporting on the FFIEC 051 Call Report for the first and third reports of condition for a year. The OCC and Board also are finalizing similar reduced reporting for certain uninsured institutions that they supervise with less than $5 billion in total consolidated assets that otherwise meet the same criteria. This document also includes a Paperwork Reduction Act notice to further reduce the amount of data required to be reported on the FFIEC 051 Call Report for the first and third calendar quarters, and other related changes. The agencies are committed to exploring further burden reduction and are actively evaluating further revisions to the FFIEC 051 Call Report, consistent with guiding principles developed by the FFIEC. The agencies also are considering ways to simplify the Call Report forms and instructions.

DATES: This rule is effective July 22, 2019.

FOR FURTHER INFORMATION CONTACT:

OCC: Cady Codding, Senior Policy Accountant, Office of the Chief Accountant, (202) 649–5764; Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490; or for persons who are deaf or hearing impaired, TTY, (202) 649–5597.

Board: Douglas Carpenter, Senior Supervisory Financial Analyst, Division of Supervision and Regulation, (202) 452–2205; Claudia Von Pervieux, Senior Counsel, (202) 452–2552, or Laura Bain, Senior Attorney, (202) 736–5546, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Robert Storch, Chief Accountant, Division of Risk Management Supervision, (202) 898–8906, *rstorch@fdic.gov;* or Andrew Overton, Examination Specialist, Division of Risk Management Supervision, (202) 898–8922, *aoverton@fdic.gov;* or Nefretete Smith, Counsel, Legal Division, (202) 898–6851, *nefsmith@fdic.gov;* or Kathryn Marks, Counsel, Legal Division, (202) 898–3896, *kmarks@fdic.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Overview of the Proposed Rule

On November 19, 2018, the agencies published a notice of proposed rulemaking (proposal or proposed rule) and associated Paperwork Reduction Act (PRA) notice that would provide reduced reporting on the Consolidated Reports of Condition and Income (Call Reports) [1] for eligible smaller depository institutions for the first and third calendar quarters, to implement section 205 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA).[2] Section 205 of EGRRCPA (section 205) requires the agencies to issue regulations that allow for a reduced reporting requirement for a covered depository institution when the institution makes the first and third report of condition for a calendar year. Section 205 defines ''covered depository institution'' as an insured depository institution ''that— (i) has less than $5,000,000,000 in total consolidated assets; and (ii) satisfies such other criteria as the [agencies] determine appropriate.'' [3]

Under the proposal, the agencies would have made reduced reporting available to small, non-complex institutions, with domestic offices only, that meet the definition of ''covered depository institution.'' The proposed rule generally would have defined ''covered depository institution'' to mean an institution that has less than $5 billion in total consolidated assets, has no foreign offices, is not required to or has not elected to use subpart E (Internal Ratings-Based and Advanced Measurement Approaches) of the agencies' regulatory capital rules to calculate its risk-based capital requirements (*i.e.,* is not an advanced approaches institution), and is not a large or highly complex institution for purposes of the FDIC's deposit insurance assessment regulations. The proposed rule would have provided reduced reporting by offering covered depository institutions the option to file a more streamlined FFIEC 051 Call Report, which is already the most streamlined version of the Call Report, with fewer data items required for the first and third calendar quarters compared to the current FFIEC 031, FFIEC 041, or FFIEC 051 Call Reports.

The proposed rule also would have included a reservation of authority, consistent with the current General Instructions to the FFIEC 051 Call Report, which would permit an agency, in consultation with the applicable state chartering authority, for supervisory purposes and on an institution-specific basis, to require an institution to file a different version of the Call Report in any calendar quarter(s) in which it otherwise would be eligible to file the FFIEC 051 Call Report, based on the agency's determination that more

[1] The ''Call Report'' is the report of condition and income for most insured depository institutions. There currently are three versions of the Call Reports: The Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041), and the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $1 Billion (FFIEC 051).

[2] 83 FR 58432. The EGRRCPA was enacted on May 24, 2018. Public Law 115–174, 132 Stat. 1296 (2018).

[3] 12 U.S.C. 1817(a)(12)(B).

information is needed for supervisory purposes.

II. Comments Received

The comment period on the proposal closed on January 18, 2019. The agencies collectively received 1,018 comments, including 21 unique comments and 997 nearly identical comments using one of two templates. Commenters included individuals, banks and bank personnel, industry trade associations, industry analysts, and members of Congress.

Commenters generally expressed the view that the reductions proposed by the agencies did not go far enough in providing reduced reporting in the first and third calendar quarters to eligible institutions. Many commenters questioned the agencies' selection of the FFIEC 051 Call Report to provide reporting burden reduction and criticized the sufficiency of the proposed burden-reducing revisions to the FFIEC 051 Call Report. Other commenters expressed concerns that the proposal would reduce the amount of publicly-available information on eligible institutions and increase burden on analysts and other members of the public who would have to obtain information directly from banks. These comments and the agencies' responses are discussed in the summary and section-by-section analysis of the final rule that follows.

In addition, a few commenters suggested technical revisions to the FFIEC 051 Call Report schedules. Comments related to the associated Call Report collection, including the additional revisions proposed to the existing FFIEC 051 Call Report to further streamline it for reduced reporting, are discussed in the PRA section of the **SUPPLEMENTARY INFORMATION**.

III. Summary of the Final Rule

After carefully considering the comments received, the agencies are adopting the final rule as proposed.

The final rule implements section 205 by prescribing the criteria that the agencies have determined to be appropriate for insured depository institutions to qualify as covered depository institutions, offering the expanded group of covered depository institutions the option to file the FFIEC 051 Call Report each calendar quarter, and establishing the reduced reporting in the FFIEC 051 Call Report permissible for such institutions for the first and third reports of condition for a year. The OCC's and Board's final rules also permit certain uninsured institutions under their supervision that otherwise meet the same criteria to qualify as covered depository institutions. The agencies' final rule includes a reservation of authority that allows the appropriate Federal banking agency of an institution, in connection with the state chartering authority, if applicable, to prohibit an otherwise eligible institution from using the FFIEC 051 Call Report.

Through the related PRA notice, the agencies are further reducing the items required to be reported by all covered depository institutions eligible to file the FFIEC 051 Call Report, as defined in the final rule, for the first and third reports of condition for a year beyond the existing level of reduced reporting in these two quarters.

As discussed further in Section IV.B. of the **SUPPLEMENTARY INFORMATION** section, the agencies anticipate further reductions to the Call Report. In particular, the agencies recently proposed additional reductions to the FFIEC 051 Call Report in connection with a proposal to simplify regulatory capital requirements for certain community banking organizations. The agencies are committed to exploring further burden reduction and are actively evaluating further revisions to the FFIEC 051 Call Report, consistent with guiding principles developed by the FFIEC.[4] The agencies also are considering ways to simplify the Call Report forms and instructions. The agencies would take into account whether revisions can be made to the FFIEC 051 Call Report without violating compliance with existing laws and regulations, jeopardizing safety and soundness supervision and monitoring, or impairing the Board's ability to conduct monetary policy or the FDIC's ability to calculate deposit insurance assessments.

IV. Section-by-Section Analysis of the Final Rule

A. Covered Depository Institution

The proposal would have defined ''covered depository institution'' as an institution that meets all the following criteria: Has less than $5 billion in total consolidated assets as reported in its report of condition for the second calendar quarter of the preceding calendar year; has no foreign offices; is not required to or has not elected to use Subpart E of the agencies' regulatory capital rules to calculate its risk-based capital requirements (*i.e.,* is not an advanced approaches institution); and is not a large or highly complex institution for purposes of the FDIC's deposit insurance assessment regulations. The OCC's definition also would have excluded institutions that file the FFIEC 002 report of condition. The FDIC's definition also would have excluded state-licensed insured branches of foreign banks. The agencies note that adopting these criteria under the final rule would not exclude any institutions that currently file the FFIEC 051 Call Report. The agencies did not receive comment on these proposed criteria.

The agencies proposed to offer reduced reporting to an ''insured depository institution'' as such term is defined in section 3 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1813, and as required by section 205. The OCC and Board also proposed extending eligibility to qualify as a covered depository institution to uninsured institutions that they supervise that otherwise meet the same criteria.[5] Parity in reporting by insured and uninsured national banks and state member banks is appropriate in light of the similarities between the information used to review the activities of such insured and uninsured institutions. The agencies received one comment that opposed allowing uninsured institutions to qualify as covered depository institutions. The commenter expressed concern that uninsured institutions pose a greater risk to depositors and U.S. taxpayers than insured institutions. The agencies note that uninsured institutions cannot accept deposits from retail customers and thus the agencies do not believe these institutions pose a greater risk to depositors or taxpayers than insured institutions. In addition, certain OCC and Board supervised uninsured institutions with total assets of less than $1 billion already file the FFIEC 051 Call Report. Accordingly, the OCC and Board are finalizing the extension of eligibility to certain uninsured depository institutions as proposed.

Asset Threshold

As mandated by section 205, the proposal would have defined a covered

[4] *See* 83 FR 58434 ((1) Data items serve a long-term regulatory or public policy purpose by assisting the FFIEC members in fulfilling their missions; (2) data items to be collected maximize practical utility and minimize, to the extent practicable and appropriate, burden on financial institutions; and (3) equivalent data items are not readily available through other means).

[5] The FDIC supervises only insured state nonmember banks, insured state savings associations, and insured state-licensed branches. Currently, no uninsured Board-regulated institution is eligible to file the FFIEC 051 Call Report, but under the final rule one uninsured Board-regulated institution would meet the criteria for eligibility to file the FFIEC 051 Call Report. The OCC supervises 49 uninsured institutions that currently are eligible to file the FFIEC 051 Call Report, which would increase to 50 under the final rule.

depository institution as one with less than $5 billion in total consolidated assets. The proposal would have defined ''total consolidated assets'' as total assets as reported in an institution's report of condition. Under the proposal, an institution would have determined whether it meets the asset-size criterion and is eligible to file the FFIEC 051 Call Report based on the total consolidated assets reported in its report of condition (Schedule RC, Balance Sheet, Item 12) for the second calendar quarter of the previous calendar year. This approach is consistent with the current FFIEC 051 Call Report instructions for determining eligibility to file the FFIEC 051 Call Report based on asset size.[6]

The agencies continue to believe that establishing the asset threshold in this manner should allow an institution sufficient time to address any accounting or reporting systems changes, or other preparation process changes, that may be needed if the institution wants to take advantage of, or becomes no longer eligible for, filing the FFIEC 051 Call Report in the following calendar year. The agencies did not receive comment on this aspect of the proposal and are finalizing as proposed.

Other Eligibility Criteria

Consistent with section 205, the proposal would have prescribed other eligibility criteria that an institution with total assets of less than $5 billion must meet in order to qualify as a covered depository institution. These other proposed criteria are based on an institution's international activities, its treatment under the agencies' regulatory capital rules, and its treatment under the FDIC's deposit insurance assessment regulations. Unlike the asset-size criterion, which is determined as of the report of condition filed for the second calendar quarter (as of June 30) of the prior calendar year, the proposal would have required an institution to determine in each calendar quarter whether it meets all of these non-asset-size criteria. If an institution ceases to meet any of these other criteria during a calendar quarter, then beginning that same quarter the institution would have become ineligible to file the FFIEC 051 Call Report. In contrast to failing the asset-size criterion, failing to meet the non-asset-size criteria often reflects a significant change in the operations of an institution as a result of deliberate planning, such as opening a foreign branch or becoming subject to a different approach under the agencies' regulatory capital rules. Therefore, the proposal did not include a grace period for non-asset-size criteria. The agencies did not receive comment on the proposed non-asset-size criteria and are finalizing as proposed.

International Activities. The proposal would have excluded from the definition of ''covered depository institution'' an institution that has foreign offices or that is an insured branch of a foreign bank. Under the proposal, foreign offices would have been defined as: Branches or consolidated subsidiaries in foreign countries[7] unless located on a U.S. military facility; international banking facilities as defined under 12 CFR 204.8; majority-owned Edge Act and Agreement[8] subsidiaries; and branches or consolidated subsidiaries in U.S. territories if the bank is chartered or headquartered in a U.S. state or the District of Columbia. Under the proposal, insured branches of foreign banks would have been those branches defined in section 3(s) of the FDI Act, 12 U.S.C. 1813(s), which file the FFIEC 002 version of the report of condition. The agencies continue to believe it is appropriate to exclude these institutions from reduced reporting because the nature of these international activities requires more comprehensive and detailed financial information to effectively supervise and monitor them than would be available on the FFIEC 051 Call Report.[9] The agencies did not receive comment on this proposed criterion and are finalizing as proposed.

Advanced Approaches Institutions. The proposal would have excluded from the definition of ''covered depository institution'' an institution that is required to, or has elected to, use Subpart E of the agencies' regulatory capital rules to calculate its risk-based capital requirements (*i.e.,* is an advanced approaches institution). In general, an advanced approaches institution is an institution that has consolidated total assets equal to $250 billion or more, has consolidated total on-balance sheet foreign exposure equal to $10 billion or more, or is a subsidiary of a depository institution or holding company that uses the advanced approaches to calculate its total-risk weighted assets.[10] Advanced approaches institutions currently are precluded from filing the FFIEC 051 Call Report. Advanced approaches institutions generally must calculate their regulatory capital requirements under the advanced approaches, which relies in part on internal models and complex formulas, and are subject to additional requirements such as the supplementary leverage ratio.[11] While advanced approaches holding companies typically have total assets of more than $250 billion, their depository institution subsidiaries, some of which may have total assets of less than $5 billion, also generally are subject to the advanced approaches. Some of these subsidiaries may engage in specialized or highly complex activities that require more comprehensive and detailed financial information to ensure effective supervision and monitoring, and thus are excluded from being eligible to file the FFIEC 051 Call Report and receive reduced reporting in the final rule.[12] The agencies did not receive comment on this proposed criterion and are finalizing as proposed.

Institutions Assessed as Large or Highly Complex by the FDIC. The proposal also would have excluded from the definition of ''covered depository institution'' an insured depository institution that is assessed as a ''large institution'' or ''highly complex institution,'' as defined in the FDIC's deposit insurance assessment regulations.[13]

[6] *See* FFIEC 051 instructions, *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC051_201903_i.pdf.*

[7] The final rule defines ''foreign country'' to refer to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States. This definition also is used in the Board's Regulation K, 12 CFR part 211.

[8] 12 CFR 211.1(c)(2) and (3).

[9] Depository institutions with foreign offices are currently required to file the FFIEC 031 Call Report and thus are not currently eligible to file the FFIEC 051 Call Report. U.S. branches of foreign banks (both federally and State-licensed) are required to file the FFIEC 002 version of the report of condition.

[10] *See* 12 CFR 3.100(b) (OCC); 217.100(b) (Board); 324.100(b) (FDIC). The agencies have invited comment on a proposed rule that would revise the framework for determining the applicability of the advanced approaches capital requirements for U.S. banking organizations. *See* Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 83 FR 66024 (December 21, 2018).

[11] *See* 12 CFR part 3, subpart E, and 12 CFR 3.10(c)(4) (OCC); 12 CFR part 217, subpart E, and 12 CFR 217.10(c)(4) (Board); 12 CFR part 324, subpart E, and 12 CFR 324.10(c)(4) (FDIC).

[12] If an institution has received an exemption from the application of subpart E of the agencies' regulatory capital rules, the exclusion under this criterion would not apply.

[13] For the purposes of the FDIC's deposit insurance assessment regulations, a ''small institution'' generally is an insured depository institution with less than $10 billion in total assets. *See* 12 CFR 327.8(e). Generally, a ''large institution'' is an insured depository institution with more than $10 billion in total assets. *See* 12 CFR 327.8(f). However, an institution with assets between $5 billion and $10 billion may request treatment as a large institution for deposit insurance assessments, and few institutions have made this request to date. *See* 12 CFR 327.16(f). Generally, a ''highly complex

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Under the FDIC's deposit insurance assessment regulations, large institutions and highly complex institutions are assessed using CAMELS ratings [14] combined with certain forward-looking financial measures that reflect the risks such institutions pose to the Deposit Insurance Fund.[15] The FDIC uses the data reported by a large institution or a highly complex institution on either the FFIEC 031 or FFIEC 041 Call Report, as appropriate, to calculate the institution's deposit insurance assessment rate. For example, the FDIC uses data on Schedule RC–O regarding higher-risk assets, which are not reported on the FFIEC 051 Call Report, to calculate financial ratios used to determine a large or a highly complex institution's deposit insurance assessment rate.

The agencies did not receive comment on this proposed criterion and are finalizing as proposed. This eligibility criterion ensures that an institution that meets the asset-size criterion based on its report of condition for the second calendar quarter of a previous year, but is treated as a large or highly complex institution for deposit insurance assessment purposes, will continue to file the FFIEC 031 or FFIEC 041 Call Report, as appropriate, which contain the data items required by the FDIC to calculate the institution's deposit insurance assessment rate. As long as an institution continues to be assessed as a large or highly complex institution, it is ineligible under the final rule to file the FFIEC 051 Call Report, including its reduced reporting, until it is reclassified for deposit insurance assessments and assessed as a ''small institution.''

B. Reduced Reporting

The proposal would have implemented the reduced reporting required by section 205 by allowing covered depository institutions to file the FFIEC 051 Call Report, as it is the most streamlined version of the Call Report and already provides significant reduced reporting in the first and third calendar quarters. The agencies, in the PRA section of the proposal, also proposed further reducing the reporting required on the FFIEC 051 Call Report in the first and third calendar quarters, by changing reporting of certain items from quarterly to semiannual or annual. The final rule implements the reduced reporting required by section 205 by allowing covered depository institutions to file the FFIEC 051 Call Report; the agencies, through the PRA section of the **SUPPLEMENTARY INFORMATION**, also are further reducing the reporting required on the FFIEC 051 Call Report in the first and third calendar quarters.

The majority of comments received by the agencies on the proposal related to the agencies' proposed use of the FFIEC 051 Call Report. Commenters expressed the view that using the FFIEC 051 Call Report to allow reduced reporting in the first and third calendar quarters would not provide sufficient reporting relief, and cited the agencies' burden estimates under the PRA for the proposed changes to the FFIEC 051 Call Report in support of their views. Many of these commenters recommended an alternate version of the Call Report for the first and third calendar quarters that consists only of an institution's basic financial statements, such as a balance sheet, income statement, and statement of changes in shareholders' equity. One commenter suggested offering this simplified reporting to a smaller subset of institutions that meet more stringent eligibility criteria, such as being well managed. Another commenter suggested that the agencies should tailor the scope of regulatory reporting to each institution based on that institution's characteristics. One commenter proposed including a schedule for regulatory capital in addition to the basic financial statements, while another commenter requested a Call Report that was no longer than 10 pages.

Other commenters, particularly investment analysts evaluating the banking industry, raised concerns about a reduction in publicly-available information from institutions that adopt reduced reporting. These commenters indicated they would need to supplement the publicly-available information by making specific information requests to the institutions they analyze. Another commenter pointed out that some items that would be reported less frequently are used as part of regulatory and investor offsite monitoring processes, and that limiting this information may result in increased information requests or review of certain items during examinations due to the more limited information on the Call Reports. According to the commenter, these reductions to the Call Report may create greater burden on an institution than the relief provided by filing a more limited Call Report two times per year.

Section 205 allows the agencies to establish the criteria for reduced reporting. The agencies' proposal sought to further reduce reporting for covered depository institutions in the first and third calendar quarters while still collecting the data necessary to meet the agencies' statutory mandates and missions, ensuring continued receipt of appropriate information to monitor safety and soundness and striking a balance between reducing reporting burden and obtaining sufficient information for supervisory purposes, including on-site examinations and off-site monitoring of covered depository institutions.

The agencies are implementing the reduced reporting required by section 205 first by offering an expanded group of institutions the option to file the FFIEC 051 Call Report each calendar quarter. The agencies elected to use the FFIEC 051 Call Report as the version of the report of condition to implement reduced reporting primarily because: It is the Call Report that collects the least information; reduced reporting in the reports for the first and third quarters was one of the primary objectives when the FFIEC 051 Call Report was first implemented in 2017 and revised in 2018; and it is already being used by the majority of institutions with total assets below the $5 billion statutory threshold set by section 205. The FFIEC 051 Call Report previously was developed to enable institutions with total assets of less than $1 billion to report less information, and contains 882 fewer data items than the FFIEC 041 Call Report, which is the agencies' standard version of the Call Report.[16] The final rule extends eligibility to file the FFIEC 051 Call Report from certain institutions with less than $1 billion in total assets to certain institutions with less than $5 billion in total assets. As a result, this approach provides significant reporting relief by offering covered depository institutions of between $1 billion and less than $5 billion in total assets that currently are required to file the FFIEC 041 Call Report the option to file the FFIEC 051 Call Report. Under the final rule, covered depository institutions

institution'' is: (i) An insured depository institution (excluding a credit card bank) that has had $50 billion or more in total assets for at least four consecutive quarters, is controlled by a U.S. parent holding company that has had $500 billion or more in total assets for four consecutive quarters, or is controlled by one or more intermediate U.S. parent holding companies that are controlled by a U.S. holding company that has had $500 billion or more in assets for four consecutive quarters; or (ii) a processing bank or trust company. *See* 12 CFR 327.8(g) and (s).

[14] A financial institution is assigned a ''CAMELS'' composite rating based on an evaluation and rating of six essential components of an institution's financial condition and operations. These component factors address the: Adequacy of capital (C); quality of assets (A); capability of management (M); quality and level of earnings (E); adequacy of liquidity (L); and sensitivity to market risk (S).

[15] *See* 12 CFR 327.16(b); 76 FR 10672, 10688–10698 (February 25, 2011).

[16] The current version of the FFIEC 051 Call Report includes 1,147 reportable data items in each of the first and third calendar quarters, compared with 2,029 reportable data items required on the FFIEC 041 Call Report in those calendar quarters.

with total assets between $1 billion and less than $5 billion are eligible to file the FFIEC 051 Call Report in each calendar quarter of a calendar year, not just in the first and third quarters, which will provide additional reporting relief for these institutions compared to the FFIEC 041 Call Report. Overall, the agencies estimate that the burden hours for institutions with total assets between $1 billion and less than $5 billion would decline 12.73 hours per quarter, from 63.69 hours filing the FFIEC 041 to 50.96 hours filing the FFIEC 051.

In addition to increasing the number of institutions eligible to file the FFIEC 051 Call Report every quarter, as discussed in the PRA section of the **SUPPLEMENTARY INFORMATION**, the agencies are further reducing the reporting required on the FFIEC 051 Call Report in the first and third calendar quarters. The agencies are reducing the frequency of reporting of approximately 37 percent of the existing data items in this report [17] from quarterly to semiannual. The principal areas of reduced reporting in the first and third calendar quarters include data items related to categories of risk-weighting of various types of assets and other exposures under the agencies' regulatory capital rules, fiduciary and related services assets and income, and troubled debt restructurings by loan category. This reduction in reporting frequency for certain data items provides all covered depository institutions that currently file the FFIEC 051 Call Report, including those with less than $1 billion in total assets, with additional reduced reporting in the first and third calendar quarters.

The agencies recognize that the reduction in reporting frequency offered for certain data items as described in the PRA section below may not provide as much of a burden reduction for every covered depository institution, because some of those data items are not relevant to or completed by every covered depository institution due to different asset portfolios and activities. However, the final rule expediently provides all covered depository institutions the option of reduced reporting in the first and third calendar quarters. For institutions with total assets of less than $1 billion that file the current version of the FFIEC 051 Call Report, implementing the further streamlined FFIEC 051 Call Report should require less cost and fewer systems changes than switching to a completely new version of a regulatory report. To align with the implementation of the final rule, the agencies are issuing the accompanying PRA notice to implement changes to the FFIEC 051 Call Report consistent with the rule.

In response to commenters' requests that the agencies implement a Call Report comprised only of basic financial statements, the agencies note that, by law, they must collect certain data items on a quarterly basis, including items that are not typically found on basic financial statements.[18] In addition to information the agencies are required to collect on a quarterly basis by statute, the agencies need other information to effectively monitor the safety and soundness of institutions and the financial system, as well as to monitor compliance with consumer financial protection laws and regulations and to fulfill agency-specific missions. With respect to commenters' concerns that the reporting reductions may result in industry analysts or investors not being able to obtain as much information from an institution through its Call Report, the agencies note that an institution is not required to switch to the FFIEC 051 Call Report, and the final rule does not restrict an institution from providing additional financial information to the public that would otherwise not be required to be reported in the first and third calendar quarters.

As the agencies explained when issuing the proposal, Call Report data provides critical information necessary for the agencies' effective supervision of depository institutions.[19] In their statutory roles of chartering, licensing, supervising, or insuring institutions, the agencies principally rely on information obtained through on-site examinations of institutions, off-site supervisory activities between examinations, and information reported on an institution's report of condition. The report of condition is the Call Report for most insured depository institutions. Consistent with the FFIEC's mandate, Call Reports collect the most current financial and statistical data available in a standardized format to identify uniformly areas of focus for supervision, including for on-site and off-site examinations.[20] The agencies use Call Report data in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data assist the agencies in their collective missions of promoting the safety and soundness of institutions and the financial system and the protection of consumer financial rights, as well as fulfilling agency-specific missions, such as conducting monetary policy, promoting financial stability, and administering federal deposit insurance. The agencies also use Call Report data in evaluating institutions' applications, including interstate merger and acquisition applications. In addition, Call Report data are used by the appropriate agencies to calculate institutions' deposit insurance assessments as well as national banks' and federal savings associations' semiannual assessment fees. In the absence of data collected through a standardized format, such as the Call Report, the agencies likely would need to rely on significantly more ad hoc data requests to individual institutions. A lack of information also increases the risk of missing new or significantly changed activities when the agencies plan on-site examinations, which could require the agencies to spend additional time on-site reviewing risk areas for which bank data was not submitted in the Call Report.

The agencies remain mindful, however, of the impact that collecting Call Report data may have on covered depository institutions. As discussed in the proposal, the agencies (through the FFIEC) started an initiative to reduce the reporting burden on all institutions, especially community banks, in December 2014.[21] The result of the agencies' multi-year effort was a meaningful reduction in reporting for all institutions that filed the FFIEC 041 Call Report at the start of the effort. As compared with the FFIEC 041 Call Report in use immediately before the implementation of the FFIEC 051 Call Report, the current FFIEC 041 Call Report now reflects a reduction of approximately 11 percent of the data items and provides for reduced reporting frequency of approximately 3 percent of the data items. The smallest institutions (with less than $1 billion in total assets) received an even greater reduction in reporting with the

[17] This percentage is relative to the FFIEC 051 Call Report filed as of June 30, 2018.

[18] For example, certain data collection and reporting requirements are satisfied through the collection of data on the various Call Report schedules: 12 U.S.C. 1817(a)(4) and (6) require reporting of deposit liabilities (Schedules RC–E); 12 U.S.C. 1817(a)(3) and (c) requires four Call Reports annually that serve as the basis for determining an institution's deposit insurance assessment (Schedule RC–O, and certain items on Schedules RI, RC, RC–C, RC–E, RC–N, and RC–R); 12 U.S.C. 1831n(a)(3)(C) requires that off-balance sheet items be reported or taken into account in any report of condition (Schedule RC–L); 12 U.S.C. 1831o and its implementing regulations address prompt corrective action requirements (12 CFR part 6 (OCC); 12 CFR part 208, subpart D (Board); and 12 CFR part 324, subpart H (FDIC)) and rely on reporting of regulatory capital quarterly (Schedule RC–R)).

[19] *See* 83 FR 58433–58434.

[20] *See e.g.,* 12 U.S.C. 3301.

[21] *See* 83 FR 58484.

implementation of the FFIEC 051 Call Report for the March 31, 2017, reporting date. The FFIEC 051 Call Report now represents a reduction of approximately 43 percent of the data items and provides for reduced reporting frequency of approximately 6 percent of the data items, as compared to the FFIEC 041 Call Report in use as of December 31, 2016, immediately before the implementation of the FFIEC 051 Call Report. Thus, the implementation of the FFIEC 051 Call Report provides a significant reduction in reporting burden for institutions that choose to file this version of the Call Report.

In the interest of making reduced reporting available to covered depository institutions expediently, particularly for institutions with total assets of between $1 billion and less than $5 billion, the agencies are finalizing this rule as proposed. The agencies also anticipate further reductions to the Call Report. In particular, the agencies have proposed additional reductions to the FFIEC 051 Call Report [22] in connection with the proposal [23] that was issued by the agencies in February of 2019 to simplify regulatory capital requirements for qualifying community banking organizations, as required by section 201 of the EGRRCPA, which the agencies estimate would further reduce the average FFIEC 051 Call Report burden from 39.77 hours to 33.65 hours, a reduction of 6.12 hours per quarter.[24]

The agencies are committed to exploring further burden reduction and are actively evaluating further revisions to the FFIEC 051 Call Report, consistent with guiding principles developed by the FFIEC.[25] The agencies also are considering ways to simplify the Call Report forms and instructions. The agencies would take into account whether revisions can be made to the FFIEC 051 Call Report without violating compliance with existing laws and regulations, jeopardizing safety and soundness supervision and monitoring, or impairing the Board's ability to conduct monetary policy or the FDIC's ability to calculate deposit insurance assessments.

C. Reservation of Authority

Consistent with the agencies' authorities and current practices, the final rule includes a reservation of authority that allows the appropriate Federal banking agency, in consultation with the relevant state chartering authority, if applicable, and on an institution-specific basis, to require a covered depository institution under the agency's supervision to file the FFIEC 041 Call Report, or any successor thereto, in any calendar quarter or quarters in which the covered depository institution would otherwise be eligible to file the FFIEC 051 Call Report, based on the agency's determination that such filing is necessary for supervisory purposes. In making such a determination, the appropriate Federal banking agency may consider criteria including whether the institution is significantly engaged in one or more complex, specialized, or other higher-risk activities, such as those for which limited information is reported in the FFIEC 051 Call Report compared to the FFIEC 041 Call Report. For example, if a covered depository institution has a considerable concentration of either trading assets or mortgage banking activities, the appropriate Federal banking agency may seek additional information from that institution by requiring the institution to file the FFIEC 041 Call Report. Generally, a covered depository institution's safety and soundness, size, complexity, activities, risk profile, and other factors, such as an increase in a covered depository institution's asset size resulting from a merger or acquisition, also may be taken into consideration.

If, after considering such factors, the agency determines that a covered depository institution should be required to file the FFIEC 041 Call Report, the agency would provide notice to the covered depository institution prior to the filing requirement's becoming effective. The reservation's terms also would be provided in the notice. Any covered depository institution required by its appropriate Federal banking agency under the reservation of authority to file the FFIEC 041 Call Report in lieu of the FFIEC 051 would be required to continue to file the FFIEC 041 Call Report until the appropriate Federal banking agency provides notice to the covered depository institution that it is no longer required to file the FFIEC 041 Call Report.

This authority provides the agencies with the flexibility to require an institution to report and disclose additional Call Report data if warranted by an institution's individual circumstances and risk profile. Consistent with current supervisory practices and experience, the exercise of the reservation of authority generally would be a decision made by a member of the appropriate agency's senior management and would not be at the discretion of examination staff. The agencies received no comment on this aspect of the proposed rule and are finalizing it as proposed.

V. Related Agency-Specific Revisions

A. Board

The Board does not currently have a rule that sets forth the report of condition filing requirements of state-chartered banks that are members of the Federal Reserve System (state member banks), and instead relies on its statutory authority under section 9 of the Federal Reserve Act (FRA) and section 7(a)(3) of the FDI Act to require state member banks to provide reports of condition. In light of section 205's requirement that the Board issue a rule that allows for reduced reporting by certain eligible Board-supervised insured depository institutions, the Board proposed to add a new subpart K to Regulation H,[26] which would incorporate the rule text implementing section 205. The Board received no comments on the proposed rule and is finalizing it as proposed. In addition to insured state member banks, the Board also supervises uninsured state member banks, such as nondepository trust companies. The Board requires such institutions to use the Call Report to submit financial data. As previously discussed in **SUPPLEMENTARY INFORMATION** section IV.A., the Board's final rule extends the use of the reduced reporting requirement to uninsured state member banks if they meet the criteria for covered depository institutions identified in the rule.

The Board also proposed to include in new subpart K, pursuant to its statutory authority under section 9 of the FRA and section 7(a)(3) of the FDI Act, § 208.122 that would set forth the general requirement that all state member banks file consolidated reports of condition and income in accordance with the instructions for these reports. The Board received no comments on § 208.122 and is finalizing the subsection as proposed.

B. FDIC

The FDIC amends part 304 of its Rules and Regulations, by restructuring the regulation and creating a ''subpart A'' and ''subpart B.'' Subpart A now contains the current text of part 304, with limited technical, non-substantive changes. The technical, non-substantive changes include: (1) Updating the address and contact information in

[22] 84 FR 16560 (April 19, 2019).

[23] 84 FR 3062 (February 8, 2019).

[24] 84 FR 16563.

[25] *See* 83 FR 58434.

[26] The Board's Regulation H governs the membership of state banking institutions in the Federal Reserve System. 12 CFR part 208.

§ 304.2; (2) clarifying that § 304.3(a) and (b) apply to insured depository institutions; (3) updating references in § 304.3(a) to the various Call Reports to include the recently implemented FFIEC 051 Call Report; and (4) updating the references to FDIC divisions to reflect changes in nomenclature. In Subpart B, the FDIC includes the regulatory text implementing section 205.

The FDIC believes that this approach to restructuring part 304 will incorporate the entirety of the new, substantive text of the final rule that implements section 205 of the EGRRCPA with minimal effect to the current text. Thus, a state nonmember bank or state savings association that believes it qualifies as a covered depository institution would be able to make that determination based on the regulatory text contained in subpart B.

C. OCC

Insured depository institutions identified in section 205 include insured Federal branches of foreign banks, as defined under section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)). While these insured Federal branches are included in the statute, they currently file the FFIEC 002 report of condition. The FFIEC 002 is used by insured and uninsured state and Federal branches and agencies of foreign banks and contains a significant amount of information relating to the operations and foreign connections of these entities. As described above in the *International Activities* section, this additional information is necessary for the OCC to supervise insured Federal branches, and a reduced reporting option would not be appropriate given the nature of their activities. Therefore, the OCC's final rule includes a criterion excluding institutions that file the FFIEC 002 report of condition from being eligible for reduced reporting. The OCC received no comments on this provision and will finalize as proposed.

In addition to insured depository institutions, which are specifically identified in section 205, the OCC also supervises a number of uninsured national banks, such as trust banks. The OCC has permitted some of these institutions to use the Call Report to submit financial data and to use the existing FFIEC 051 if they meet the current eligibility requirements for filing that Call Report. Therefore, the OCC's rule extends the use of the reduced reporting requirement to uninsured national banks if they meet the criteria for covered depository institutions identified in the rule. As discussed earlier, the OCC received one comment objecting to permitting uninsured institutions to use reduced reporting. For the reasons discussed earlier, the OCC does not agree with the commenter and is finalizing this provision as proposed.

VI. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the final rule affect a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The agencies have reviewed the final rule, including the changes to the FFIEC 051 Call Report that are discussed in this PRA section, and determined that it would result in changes to the reporting requirements associated with the FFIEC 051 Call Report, which have been previously cleared by the OMB. The agencies made submissions to the OMB at the proposed rule stage. The OMB instructed the agencies to resubmit the notice at the final rule stage addressing any comments received and analyzing the expected burden reduction associated with the final rule. The final rule expands the eligibility to file the FFIEC 051 Call Report to certain institutions with $1 billion or more, but less than $5 billion, in total assets that meet other eligibility criteria. In addition to the expanded eligibility to file this report, the agencies also are making other revisions to the FFIEC 051 Call Report, as discussed under Current Actions below. With the OMB approval, these revisions to the FFIEC 051 Call Report are proposed to take effect as of the September 30, 2019, report date. The agencies are proposing to extend for three years, with revision, the reporting requirements associated with the Call Report.

Current Actions

Overview

First, as described above, the agencies are revising the criteria for determining whether an institution is eligible to file the FFIEC 051 Call Report to match the criteria in the final rule. While the final rule provides for reduced reporting on reports filed for the first and third calendar quarters, the agencies are revising the eligibility criteria to extend to all eligible institutions with less than $5 billion in total assets that meet other criteria in the final rule the option to file the FFIEC 051 Call Report for all four calendar quarters. Therefore, if an institution is eligible to file the FFIEC 051 Call Report for the first and third calendar quarters pursuant to the rule, the institution also could file the FFIEC 051 Call Report for the second and fourth calendar quarters provided the institution continues to meet the non-asset-size criteria. The revisions to the eligibility criteria for filing the FFIEC 051 Call Report would be made in the General Instructions section of the Call Report instructions and would include the increase in the asset-size threshold to less than $5 billion in total assets as well as the addition to the existing non-asset-size criteria of a criterion to exclude institutions that are treated as large or highly complex institutions for deposit insurance assessment purposes. The Call Report instructions currently provide that, beginning with the first quarterly report date following the effective date of a business combination, a transaction between entities under common control, or a branch acquisition that is not a business combination involving an institution and one or more other depository institutions, the resulting institution, regardless of its size prior to the transaction, must file the FFIEC 041 Call Report if its consolidated total assets after the consummation of the transaction are $1 billion or more. The agencies are removing this provision from the instructions, but the resulting institution may be required to file the FFIEC 041 Call Report consistent with the reservation of authority in the rule. All of the final FFIEC 051 Call Report eligibility criteria, along with justifications, are provided above in section IV.A. of the **SUPPLEMENTARY INFORMATION** section (''Covered Depository Institution''). Based on Call Report data as of June 30, 2018, there were 547 institutions with $1 billion or more, but less than $5 billion in total assets that likely would meet the definition of ''covered depository institution'' in the final rule.

Second, the agencies are revising the reporting frequency and applicability of certain data items in the FFIEC 051 Call Report. Specifically, the agencies are reducing the reporting frequency of certain existing data items in the FFIEC 051 Call Report from quarterly to semiannual reporting. The agencies are reducing reporting in the first and third calendar quarters by 502 data items [27] or

[27] This number includes 69 data items collected on Schedule RC–T, Fiduciary and Related Services, that are only reported by certain institutions with fiduciary powers that have fiduciary activity to report.

a reduction of approximately 37 percent of the data items included in the June 30, 2018, FFIEC 051 Call Report.

Third, for covered depository institutions with total assets of $1 billion or more, but less than $5 billion, the agencies are adding to the FFIEC 051 Call Report certain data items that these institutions currently report on the FFIEC 041 Call Report, but generally with reduced reporting frequency. The agencies are adding these items to meet the agencies' data needs and assist the agencies in fulfilling their missions of ensuring the safety and soundness of depository institutions and the financial system, as well as the protection of consumer financial rights and administering federal deposit insurance.

As described above, the agencies received 1,018 comments on the combination proposed rule and PRA revision. A majority of those comments addressed the proposed rule, particularly the agencies' proposal to use the FFIEC 051 Call Report to establish reduced reporting in the first and third quarters. Comments on the proposed revisions to the FFIEC 051 Call Report itself are discussed and addressed under the relevant headings below.

Changes to the Frequency of Data Collection in the FFIEC 051 Call Report

As explained in more detail in the initial PRA section in the proposed rule, the agencies are reducing the frequency of the following items on the FFIEC 051 Call Report from quarterly to semiannual (*i.e.,* these items would be reported in the June 30 and December 31 Call Reports only):

- Schedule RI, Income Statement, Memorandum item 14.
- Schedule RC–C, Part I, Loans and Leases, Memorandum items 1.a through 1.f, and Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, Memorandum items 1.a through 1.f.
- Schedule RC–E, Deposit Liabilities, Memorandum items 1.a and 5.
- Schedule RC–M, Memoranda, items 8.a through 8.c.
- Schedule RC–R, Part II, Regulatory Capital Risk-Weighted Assets, items 1 through 25, columns A through U, as applicable, and Memorandum items 1 through 3, including all subitems and columns.
- Schedule RC–T, Fiduciary and Related Services, items 4 through 13, columns A through D; items 14 through 22; and Memorandum items 3.a through 3.h, for institutions with total fiduciary assets greater than $250 million but less than or equal to $1 billion, and gross fiduciary and related services income less than or equal to 10 percent of total revenue.[28]

The agencies received a number of comments on the proposed reductions in frequency. One commenter objected to the proposal, stating that the changes increase the burden associated with making systems changes and increase the risk of errors if data is only reconciled and reported semiannually instead of quarterly. Several commenters stated that the frequency reductions on Schedule RC–T would not provide a burden reduction for them, because many of the data items already are not reported by many small banks. Two commenters stated that the frequency reductions on Schedule RC–R are meaningless, either because institutions must still calculate total risk weighted assets on Schedule RC–R, Part II, or that the agencies' proposed rulemaking on a simplified leverage ratio for community banks (CBLR proposal) [29] would make the existing Schedule RC–R irrelevant for most institutions.

The agencies are implementing the frequency reductions as proposed. The agencies note that the proposal is only reducing the minimum frequency for items reported in the FFIEC 051 Call Report. Covered depository institutions may still elect to submit data on a quarterly basis; the Central Data Repository, which the agencies use to receive and store data on the Call Reports, will still accept quarterly data submissions for items even if those items are only required semiannually. Therefore, an institution that wishes to continue submitting these items to the agencies on a quarterly basis may do so.

Regarding Schedule RC–R, currently, institutions must continue to calculate and report total risk-weighted assets. However, there is some burden reduction associated with eliminating the reporting of the data item components to calculate total risk-weighted assets (inputs) in the first and third quarters. In calculating total risk-weighted assets in the first and third quarters, institutions may be able to use more efficient methods to collect the inputs rather than using the template provided by the agencies, and would not need to validate each input reported on Schedule RC–R, Part II, which would save the institutions review time in preparing that schedule. In addition, as another commenter noted, the agencies' CBLR proposal would make Schedule RC–R, Part II, irrelevant for qualifying community banking organizations. The agencies note that if the CBLR proposal is implemented as proposed, institutions that qualify would experience additional burden reduction in the Call Report compared to preparing the existing reporting on Schedule RC–R. The estimated average burden hours for the FFIEC 051 Call Report is currently 39.77,[30] which would decrease to 33.65 under the CBLR proposal. Therefore, the CBLR proposal would represent a reduction in estimated average burden hours per quarter of 6.12 (or 15.39 percent) for the FFIEC 051 Call Report for institutions.[31] The agencies have opted to pursue burden relief now and have proposed to provide additional relief in the future on this schedule.

Addition of Data Items to the FFIEC 051 Call Report for Institutions With Total Assets of $1 Billion or More

The agencies are adding certain data items to the FFIEC 051 Call Report that would apply only to covered depository institutions with total assets of $1 billion or more. These items are currently reported by institutions with total assets of $1 billion or more that file the FFIEC 031 or FFIEC 041 Call Report, but they are not required to be completed by institutions with less than $1 billion in total assets that file the FFIEC 031, FFIEC 041, or FFIEC 051 Call Reports. Therefore, the additional data items would not represent new data items for covered depository institutions with total assets of $1 billion or more, but rather are items carried over from the FFIEC 041 version of the Call Report, generally using the same definitions and calculations. Furthermore, all but one of these items would be reported less frequently in the FFIEC 051 Call Report than they are currently reported in the FFIEC 041 Call Report. More detailed information on these items can be found in the PRA section of the agencies' proposed rule.[32]

- Schedule RI, Memorandum items 15.a. through 15.d. These items currently are required quarterly in the FFIEC 041 Call Report and only would be required annually as of December 31 in the FFIEC 051 Call Report from institutions with $1 billion or more, but less than $5 billion in total assets.
- Schedule RI–C, Disaggregated Data on the Allowance for Loan and Lease Losses (ALLL). The agencies are adding a condensed version of the existing FFIEC 041 Schedule RI–C, Part I, to the

[28] Total fiduciary assets are measured as of the preceding December 31. Gross fiduciary and related services income is measured as a percentage of revenue (net interest income plus noninterest income) for the preceding calendar year.

[29] 84 FR 3062 (February 8, 2019).

[30] 84 FR 4131 (February 14, 2019).

[31] 84 FR 16560 (April 19, 2019).

[32] 83 FR 58442–58443.

FFIEC 051 Call Report as Schedule RI–C and reducing the reporting frequency of this condensed schedule from quarterly to semiannual (*i.e.,* reported in the June 30 and December 31 Call Reports only) for institutions with $1 billion or more, but less than $5 billion, in total assets. Consistent with the agencies' proposed and final revisions to the FFIEC 041 Call Report related to implementation of the current expected credit losses (CECL) methodology,[33] institutions in this size range that have adopted CECL would also report disaggregated data on the allowance for credit losses on held-to-maturity securities on Schedule RI–C on a semiannual basis.

• Schedule RC–E, Memorandum items 6 and 7, including all subitems. These items currently are required quarterly in the FFIEC 041 Call Report and only will be required annually as of December 31 in the FFIEC 051 Call Report from institutions with $1 billion or more, but less than $5 billion in total assets.

• Schedule RC–O, Other Data for Deposit Insurance and FICO Assessments, Memorandum item 2. This item is required quarterly in the FFIEC 041 Call Report, and will continue to be required quarterly in the FFIEC 051 Call Report from institutions with $1 billion or more, but less than $5 billion in total assets.

The agencies received five comments on the items proposed to be added to the FFIEC 051 Call Report. Four comments objected to adding the data items on Schedules RI and RC–E. These data items relate to consumer deposit accounts and deposit account fees, and the commenters stated that this information should not be collected in the Call Report. One comment requested that the agencies retain the items to be added to the FFIEC 051 Call Report on the same schedules and in the same locations in the FFIEC 051 Call Report as they are reported in the FFIEC 041 Call Report, to minimize the burden of making systems changes to implement the revisions.

These data items, including the items on Schedules RI and RC–E, are necessary for the agencies to supervise and monitor consumer deposit account activity at institutions with total assets of $1 billion or more, but less than $5 billion that file the FFIEC 051 Call Report. The agencies also note that the items on Schedules RI and RC–E would be collected annually instead of quarterly, which would provide a reduction in burden for these institutions in the other three quarters. Regarding the comment on the location of these items, the agencies agree with the commenter's recommendation and will retain the items that were proposed to be moved from Schedules RI, RI–C, and RC–E on their existing schedules rather than including them in Schedule SU, Supplemental Information.

[33] *See* 83 FR 49160 (September 28, 2018) and 84 FR 4131 (February 14, 2019).

Additional Comments on the Call Report

The agencies also received one comment suggesting that they propose revisions to the FFIEC 031 and FFIEC 041 versions of the Call Report for institutions with total assets of less than $5 billion that either are not eligible for the reduced reporting or choose not to use reduced reporting in the FFIEC 051 Call Report. While the agencies may consider proposing burden-reducing revisions to the FFIEC 031 or 041 versions of the Call Report in the future, the agencies are not prepared to propose any specific revisions to these versions of the Call Report at this time. If an institution does not meet the criteria to use the FFIEC 051 Call Report, then reporting on the existing FFIEC 031 or FFIEC 041 Call Report is appropriate.

Effective Date

Subject to OMB approval, the revisions to the FFIEC 051 Call Report described above would take effect as of the September 30, 2019, report date. The less than $5 billion asset-size test for determining eligibility to file the FFIEC 051 Call Report in 2019 would be based on the total assets reported on an institution's Call Report as of June 30, 2018. An institution eligible to file the FFIEC 051 Call Report also has the option to file the FFIEC 041 Call Report. For an institution with less than $5 billion in total assets that qualifies to use the FFIEC 051 Call Report for the first time as a result of the agencies' increase in the asset-size reporting threshold for the FFIEC 051 Call Report from less than $1 billion to less than $5 billion, and that desires to use that report form but is unable to do so for the September 30, 2019, Call Report date, the institution may begin reporting on the FFIEC 051 Call Report as of the December 31, 2019, report date. Beginning in 2020, an institution should file whichever version of the Call Report for which it is both eligible and chooses to file in the first quarter of that year, for the remainder of that year if it meets the asset-size threshold for eligibility as of June 30, 2019, and continues to meet the non-asset-size criteria.

Proposed Revision, With Extension for Three Years, of the Following Information Collections

Report Title: Consolidated Reports of Condition and Income (Call Report).
Form Number: FFIEC 031, FFIEC 041, and FFIEC 051 (for eligible small institutions).
Frequency of Response: Quarterly.
Affected Public: Business or other for-profit.
Type of Review: Revision and extension of currently approved collections.
OCC:
OMB Control No.: 1557–0081.
Estimated Number of Respondents: 1,178 national banks and federal savings associations.
Estimated Average Burden per Response: 44.45 burden hours per quarter to file.
Estimated Total Annual Burden: 209,448 burden hours to file.
Board:
OMB Control No.: 7100–0036.
Estimated Number of Respondents: 794 state member banks.
Estimated Average Burden per Response: 48.42 burden hours per quarter to file.
Estimated Total Annual Burden: 153,782 burden hours to file.
FDIC:
OMB Control No.: 3064–0052.
Estimated Number of Respondents: 3,483 insured state nonmember banks and state savings associations.
Estimated Average Burden per Response: 43.44 burden hours per quarter to file.
Estimated Total Annual Burden: 605,206 burden hours to file.

When the estimates are calculated across the agencies considering all expected filers of the FFIEC 051 Call Report, the estimated average burden hours per calendar quarter for this report are 40.27 hours. The burden hours for filers of the currently approved FFIEC 051 Call Report are 39.77 hours (using September 30, 2018, data). The increase in the overall average for the FFIEC 051 reflects that newly eligible institutions (with total assets between $1 billion and less than $5 billion) generally have amounts to report in more items on that report than current filers (with total assets of less than $1 billion). For the current FFIEC 051 Call Report filers, the revisions to the FFIEC 051 Call Report described in this document would decrease average burden hours per quarter from approximately 40.11 hours to 39.08 hours, a reduction of 1.03 hours per quarter (using December 31, 2018, data). For newly eligible filers, the average burden hours would decrease from approximately 63.69 hours to 50.96 hours, a reduction of 12.73 hours per quarter. The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). In addition, the estimates of the average burden per response for FFIEC 051 Call Report filers are averages across the Call Reports for these filers for all four quarters of the year. As a consequence, the estimated average burden blends the effects of reduced reporting in the first and third quarters with the reporting that occurs in all four quarters. Estimates of the average burden hours solely for completing the FFIEC 051 Call Report in the first or the third quarter would be less than the overall average per response.

Comments on the Burden Estimate

The agencies received two comments specifically about the burden calculation. One commenter stated that the reductions in frequency would save his institution approximately 2 hours per quarter. The commenter's estimate is consistent with the agencies' estimate of a savings of 1.03 hours per quarter. A second commenter stated that preparing the Call Report requires approximately 120 hours per quarter at his institution. For an institution that relies primarily on manual processes to complete the Call Report, the agencies' supervisory experiences indicate that 60–80 hours may be more typical. The agencies recognize that institutions may use unique approaches for preparing the Call Report that rely on varying degrees of manual and automated processes that are tailored to their individual circumstances, and the burden estimate reflects averages that take into consideration such a wide range of practices. However, increased use of automated systems generally results in greater efficiencies and lower manual intervention for institutions. The agencies note that their estimate of approximately 40 hours per quarter is consistent with an average across all institutions, including institutions that use automated systems and those that do not. While in some cases the set-up and operating costs of integrating general ledger and core systems with Call Report software as a means to substantially automate the Call Report preparation process may be significantly lower than the recurring cost of employees using manual or less automated processes, the agencies recognize institutions' prerogatives to make their own business decisions regarding the use of automation for the Call Report process.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act [34] (RFA) requires an agency to either provide an initial regulatory flexibility analysis with a proposed rule for which general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[35] Under regulations issued by the SBA, the size standard to be considered a small business for banking entities subject to the proposed rule is $550 million or less in consolidated assets.[36]

OCC: The RFA requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of $550 million or less and trust companies with total revenue of $38.5 million or less) or to certify that the proposed rule, if finalized, would not have a significant economic impact on a substantial number of small entities. As of December 31, 2018, the OCC supervised 758 small entities. The rule would expand eligibility to file the FFIEC 051 version of the Call Report to institutions with total assets of between $1 billion and less than $5 billion. None of these newly eligible institutions would be considered small entities as defined by the SBA. Therefore, the OCC certifies that the final rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: In accordance with section 603(a) of the RFA,[37] the Board published an initial regulatory flexibility analysis (IRFA) for the proposal.[38] The Board solicited public comment on the effect of the proposal on small entities and on any significant alternatives that would reduce the regulatory burden on small entities. The Board did not receive any comment on the IRFA.

The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The FRFA must contain (1) a statement of the need for, and objectives of, the proposed rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any changes made to the proposed rule in the final rule as a result of the comments; (4) a description of an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities, including a statement for selecting or rejecting the other significant alternatives to the rule considered by the agency. In accordance with section 604 of the RFA, the Board has reviewed the final rule.

Under regulations issued by the SBA, a small entity includes a state member bank with total assets of $550 million or less. As of June 30, 2018, there were approximately 533 state member banks that qualified as small entities. The requirement set forth in § 208.122 of the Board's proposed rule requiring state member banks to file reports of condition applies to all state member banks, regardless of size. However, § 208.122 does not establish a new requirement, but only implements in Board regulation a statutory requirement to which state member banks already were subject.

Section 208.123 of the Board's final rule allows state member banks that qualify as covered depository institutions to file reduced reporting in first and third calendar quarters of the year, which applies to approximately 533 state member banks that qualify as

[34] 5 U.S.C. 601 *et seq.*

[35] U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[36] *See* 13 CFR 121.201.

[37] 5 U.S.C. 603.

[38] 83 FR 58432 (November 19, 2018).

small entities. However, § 208.123 allows but does not require these small state member banks to file reduced reporting. Accordingly, the final rule will not have a significant economic impact on a substantial number of small entities.

Based on its analysis and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the application of the final rule.*

As discussed in the **SUPPLEMENTARY INFORMATION**, section 205 of EGRRCPA requires the agencies to allow for a reduced reporting requirement for a ''covered depository institution'' when an institution files the first and third Call Reports for a year. The agencies' goal is to implement section 205 and to reduce the reporting burden for covered depository institutions by offering them the option to file the FFIEC 051 Call Report in the first and third quarters of a calendar year.

In connection with the implementation of reduced reporting mandated by section 205, the Board is setting forth the general requirement that all state member banks must file consolidated reports of condition pursuant to its statutory authority under section 9 of the FRA and section7(a)(3) of the FDIA.

2. *Significant issues raised by the public comments in response to the IRFA, a statement of the Board's assessment of such issues, and a statement of any changes made in the rule as a result of such comments.*

As noted above, the Board did not receive any comments on the IRFA.

3. *Response to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and detailed statement of any changes made to the proposed rule in the final rule as a result of the comments.*

The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposal.

4. *Description and estimate of the number of small entities to which the rule will apply.*

The final rule will apply to approximately 563 state member banks, of which 533 state member banks have $550 million or less in total consolidated assets.

5. *Description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

The final rule does not impose any new reporting, recordkeeping, or other compliance requirements on small state member banks. First, state member banks are already required to file reports of condition each quarter of the calendar year in accordance with the instructions of such reports. Second, the final rule allows small state member banks that qualify as covered depository institutions to reduce their reporting, recordkeeping, and compliance burden by filing the FFIEC 051 Call Report, the shortest version of the Call Report, with further reduced reporting in the first and third calendar quarters. As a result, the Board expects that the final rule will reduce the reporting and associated recordkeeping and compliance costs for the majority of small state member banks.

6. *Description of the steps taken to minimize the economic impact on small entities, including a statement for selecting or rejecting the other significant alternatives to the rule considered by the agency.*

As noted, the final rule does not impose any new requirements on small state member banks and instead allows small state member banks that qualify as covered depository institutions the option to reduce their reporting burden. In light of the foregoing, the Board does not believe the final rule will have a significant economic impact on small state member banks.

FDIC: The RFA requires that, in connection with a final rule, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.[39] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[40] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions.

Based on December 31, 2018, Call Report data, the FDIC supervises 3,489 insured depository institutions, of which 2,674 are considered small entities for the purposes of RFA. For the reasons described below, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

As the agencies discussed in the **SUPPLEMENTARY INFORMATION** section above, the final rule implements section 205 by defining ''covered depository institution'' to, among other things, expand eligibility for filing the FFIEC 051 Call Report to insured depository institutions with $1 billion or more, but less than $5 billion in total assets. Through a related PRA notice, the agencies are reducing the reporting frequency for more than 400 data items on the FFIEC 051 Call Report for the first and third reports of condition for a year, and to add certain data items to the FFIEC 051 Call Report that would apply only to covered depository institutions with total assets of $1 billion or more. Out of the additional data items, only one would be required to be reported every quarter, while the remaining only would be required semiannually or annually (*i.e.,* in the second and fourth quarters, or only the fourth quarter).

The FDIC estimates that under the revised definition of ''covered depository institution'' in the final rule, 295 FDIC-supervised depository institutions that reported total assets of $1 billion or more, but less than $5 billion as of June 30, 2018, could be eligible to file the FFIEC 051 Call Report assuming they meet the other non-asset-size criteria under the final rule. However, because this aspect of the final rule only affects institutions with $1 billion or more, but less than $5 billion, in total assets, it will not affect any small, FDIC-supervised institutions.

As the agencies discussed in the PRA section, the FDIC and the other agencies are reducing the reporting frequency of more than 400 data items on the FFIEC 051 Call Report for the first and third calendar quarters. These data items are currently collected every calendar quarter on the FFIEC 051 Call Report.

[39] 5 U.S.C. 601 *et seq.*

[40] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective December 2, 2014). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

Every covered depository institution with less than $5 billion in total assets that files the FFIEC 051 Call Report would experience a reduction in reporting burden for the first and third calendar quarters as a result of this final rule. The FDIC estimates that the reduction in reporting frequency of more than 400 data items in the FFIEC 051 Call Reports for the first and third calendar quarters would reduce the average quarterly burden hours for current FFIEC 051 Call Report filers by 1.03 hours per institution. For the 2,158 small, FDIC-supervised depository institutions that filed the FFIEC 051 Call Report for the December 31, 2018, report date, this represents a total estimated burden reduction of 2,223 hours per quarter.[41] While the reduced reporting could affect a substantial number of small, FDIC-supervised depository institutions, it would not result in a significant economic impact.

Based on the agencies' total estimated hourly wage rate of $117 for Call Report preparation, and the reduction in reporting hours resulting from the reduced reporting frequency of certain items in the FFIEC 051 Call Report discussed in the PRA section, it is estimated that annual reporting costs could be $1,040,364 less for small, FDIC-supervised insured depository institutions that file the FFIEC 051 Call Report, or 0.010 percent of total annualized noninterest expenses.[42]

The final rule could pose some additional regulatory costs for small, FDIC-supervised depository institutions that file the FFIEC 051 Call Report that are associated with changes to internal systems or processes. The FDIC anticipates that costs associated with either switching to file the FFIEC 051 Call Report (for institutions with $1 billion or more, but less than $5 billion in total assets), or reprogramming for reduced reporting in the first and third calendar quarters, would be one-time costs (for all covered depository institutions). However, these costs are difficult to estimate accurately with available information because they depend upon the individual characteristics of each insured depository institution, their recordkeeping and reporting systems, and the decisions of senior management.

Based on the information above, the FDIC certifies that the final rule will not have a significant economic impact, although a substantial number of small entities will be affected.

In the proposal, the FDIC invited comment on all aspects of the supporting information provided in this RFA section but did not receive any comments.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward manner, and did not receive any comments on the use of plain language.

D. Effective Date Under the Administrative Procedure Act and Riegle Community Development and Regulatory Improvement Act of 1994

The Administrative Procedure Act (APA) requires that a final rule be published in the **Federal Register** no less than 30 days before its effective date unless, among other exceptions, the final rule relieves a restriction.

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (''RCDRIA''), in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

The final rule reduces reporting and disclosure requirements on insured depository institutions. Because the final rule does not impose additional reporting, disclosure, or other requirements on insured depository institutions, section 302 of the RCDRIA does not apply. The agencies are adopting July 22, 2019, as the effective date so as to provide a minimum of 30 days under the APA.

E. OCC Unfunded Mandates Reform Act of 1995

The OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The OCC estimates there are 120 national banks and Federal savings associations with total assets between $1 billion and less than $5 billion that would be eligible for reduced reporting under the final rule. The OCC estimates that each of these institutions that switches to the FFIEC 051 could save approximately $6,000 per year. Savings may be less during the first year of implementation due to costs associated with updating systems and processes, but these costs are not expected to exceed the estimated savings. Therefore, the OCC has determined that this final rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this final rule.

List of Subjects

12 CFR Part 52

Banks, banking, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Consumer protection, Currency, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 304

Bank deposit insurance, Banks, banking, Freedom of information, Reporting and recordkeeping requirements.

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■ For the reasons set out in the joint preamble, the OCC is adding 12 CFR part 52 to read as follows:

PART 52—REGULATORY REPORTING

Sec.
52.1 Authority and purpose.
52.2 Definitions.
52.3 Reduced reporting.
52.4 Reservation of authority.

Authority: 12 U.S.C. 93a, 161, 1463(a), 1464(v), and 1817(a)(12).

[41] 1.03 hours * 2,158 institutions.

[42] $117 per hour * 2,223 hours per quarter * 4 quarters per year. Call Report Data as of December 31, 2018.

§ 52.1 Authority and purpose.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 93a, 161, 1463(a), 1464(v), and 1817(a)(12).

(b) *Purpose.* This part establishes a reduced reporting requirement for a covered depository institution making its reports of condition for the first and third calendar quarters of a year.

§ 52.2 Definitions.

Covered depository institution means a national bank, Federal savings association, or insured Federal branch that meets the following criteria:

(1) Has less than $5 billion in total consolidated assets as reported in its report of condition for the second calendar quarter of the preceding year;

(2) Has no foreign offices, as defined in this section;

(3) Is not required to or has not elected to use 12 CFR part 3, subpart E (for advanced approaches banks), to calculate its risk-based capital requirements;

(4) Is not a large institution or highly complex institution, as such terms are defined in 12 CFR 327.8, or treated as a large institution, as requested under 12 CFR 327.16(f); and

(5) Is not subject to the filing requirements for the FFIEC 002 report of condition.

Foreign country refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States.

Foreign office means:

(1) A branch or consolidated subsidiary in a foreign country, unless the branch is located on a U.S. military facility;

(2) An international banking facility as such term is defined in 12 CFR 204.8;

(3) A majority-owned Edge Act or Agreement subsidiary as defined in 12 CFR 28.2, including both its U.S. and its foreign offices; and

(4) For an institution chartered or headquartered in any U.S. state or the District of Columbia, a branch or consolidated subsidiary located in a U.S. territory or possession.

Report of condition means the FFIEC 031, FFIEC 041, or FFIEC 051 versions of the Consolidated Report of Condition and Income (Call Report) or the FFIEC 002 (Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks), as applicable, and as they may be amended or superseded from time to time in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Total consolidated assets means total assets as reported in an institution's report of condition.

§ 52.3 Reduced reporting.

A covered depository institution may file the FFIEC 051 version of the Call Report, or any successor thereto, to satisfy its requirement to file a report of condition for the first and third calendar quarters of a year.

§ 52.4 Reservation of authority.

The OCC may determine that a covered depository institution shall not use the reduced reporting in § 52.3. In making this determination, the OCC will consider whether the institution is significantly engaged in complex, specialized, or higher risk activities, for which a reduced reporting requirement would not provide sufficient information. The institution has 30 days following notification from the OCC to inform the OCC, in writing, of why it should continue to be eligible to use reduced reporting or cannot cease using reduced reporting in the OCC's proposed timeframe. The OCC will make a final decision after reviewing any response. Nothing in this part shall be construed to limit the OCC's authority to obtain information from a covered depository institution.

FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the joint preamble, the Board amends 12 CFR part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 2. The authority citation of part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, and 5371; 15 U.S.C. 78b, 78I(b), 78l(i), 780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

■ 3. Add subpart K to part 208 to read as follows:

Subpart K—Forms, Instructions and Reports

Sec.

§ 208.120 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board under section 7 of the Federal Deposit Insurance Act, 12 U.S.C. 1817(a)(3) and (12), and section 9 of the Federal Reserve Act, 12 U.S.C. 324.

(b) *Purpose and scope.* This subpart informs a state member bank where it may obtain forms and instructions for reports of conditions and implements 12 U.S.C. 1817(a)(12) to allow reduced reporting for a covered depository institution when such institution makes its reports of condition for the first and third calendar quarters of a year.

§ 208.121 Definitions.

Covered depository institution means a state member bank that meets all of the following criteria:

(1) Has less than $5 billion in total consolidated assets as reported in its report of condition for the second calendar quarter of the preceding year;

(2) Has no foreign offices, as defined in this section;

(3) Is not required to or has not elected to use 12 CFR part 217, subpart E, to calculate its risk-based capital requirements; and

(4) Is not a large institution or highly complex institution, as such terms are defined in 12 CFR 327.8, or treated as a large institution, as requested under 12 CFR 327.16(f).

Foreign country refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States.

Foreign office means:

(1) A branch or consolidated subsidiary in a foreign country, unless the branch is located on a U.S. military facility;

(2) An international banking facility as such term is defined in 12 CFR 204.8;

(3) A majority-owned Edge Act or Agreement subsidiary including both its U.S. and its foreign offices; and

(4) For an institution chartered or headquartered in any U.S. state or the District of Columbia, a branch or consolidated subsidiary located in a U.S. territory or possession.

Report of condition means the FFIEC 031, FFIEC 041, or FFIEC 051 versions of the Consolidated Report of Condition and Income (Call Report) or the FFIEC 002 (Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks), as applicable, and as they may be amended or superseded from time to time in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Total consolidated assets means total assets as reported in a state member bank's report of condition.

§ 208.122 Reporting.

(a) A state member bank is required to file the report of condition (Call Report) in accordance with the instructions for these reports. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of, the Call Report. The Board uses Call Report data to monitor the condition, performance, and risk profile of individual state member banks and the banking industry. Reporting state member banks must also submit annually such information on small business and small farm lending as the Board may need to assess the availability of credit to these sectors of the economy. The report forms and instructions can be obtained from Federal Reserve District Banks or through the website of the Federal Financial Institutions Examination Council, *http://www.ffiec.gov/.*

(b) Every insured U.S. branch of a foreign bank is required to file the FFIEC 002 version of the report of condition (Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks) in accordance with the instructions for the report. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of the report. The Board uses the reported data to monitor the condition, performance, and risk profile of individual insured branches and the banking industry. Insured branches must also submit annually such information on small business and small farm lending as the Board may need to assess the availability of credit to these sectors of the economy. The report forms and instructions can be obtained from Federal Reserve District Banks or through the website of the Federal Financial Institutions Examination Council, *http://www.ffiec.gov/.*

§ 208.123 Reduced reporting.

A covered depository institution may file the FFIEC 051 version of the report of condition, or any successor thereto, which shall provide for reduced reporting for the reports of condition for the first and third calendar quarters for a year.

§ 208.124 Reservation of authority.

(a) Notwithstanding § 208.123, the Board in consultation with the applicable state chartering authority may require an otherwise eligible covered depository institution to file the FFIEC 041 version of the report of condition, or any successor thereto, based on an institution-specific determination. In making this determination, the Board may consider criteria including, but not limited to, whether the institution is significantly engaged in one or more complex, specialized, or other higher risk activities, such as those for which limited information is reported in the FFIEC 051 version of the report of condition compared to the FFIEC 041 version of the report of condition. Nothing in this part shall be construed to limit the Board's authority to obtain information from a state member bank.

(b) Nothing in this subpart limits the authority of the Board under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions or violations of law.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation revises 12 CFR part 304 to read as follows:

PART 304—FORMS, INSTRUCTIONS, AND REPORTS

Subpart A—In General

Sec.

Subpart B—Implementation of Reduced Reporting Requirement

Authority: 5 U.S.C. 552; 12 U.S.C. 1464, 1817, 1831, 1867.

Subpart A—In General

§ 304.1 Purpose.

This part informs the public where it may obtain forms and instructions for reports, applications, and other submittals used by the FDIC, and also describes certain forms that are not described elsewhere in FDIC regulations.

§ 304.2 Where to obtain forms and instructions.

Forms and instructions used in connection with applications, reports, and other submittals used by the FDIC can be obtained by contacting the FDIC Public Information Center (550 17th Street NW, Washington, DC 20429; telephone: (877) 275–3342 or (703) 562–2200), except as noted in § 304.3. In addition, many forms and instructions can be obtained from FDIC regional offices. A list of FDIC regional offices can be obtained from the FDIC Public Information Center, or found at the FDIC's website at *http://www.fdic.gov,* or in the directory of FDIC Law, Regulations, Related Acts published by the FDIC.

§ 304.3 Reports.

(a) *Consolidated Reports of Condition and Income, Forms FFIEC 031, 041, and 051.* Pursuant to section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) and other applicable law, every insured depository institution is required to file Consolidated Reports of Condition and Income (also known as the Call Report) in accordance with the instructions for these reports. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of, the Call Report. The FDIC uses Call Report data from all insured depository institutions to calculate deposit insurance assessments and monitor the condition, performance, and risk profile of individual banks and the banking industry. Reporting banks must also submit annually such information on small business and small farm lending as the FDIC may need to assess the availability of credit to these sectors of the economy. The report forms and instructions can be obtained from the Division of Insurance and Research (DIR), FDIC, 550 17th Street NW, Washington, DC 20429 or through the website of the Federal Financial Institutions Examination Council, *http://www.ffiec.gov/.*

(b) *Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, Form FFIEC 002.* Pursuant to section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) and other applicable law, every insured U.S. branch of a foreign bank is required to file a Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks in accordance with the instructions for the report. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of the report. The FDIC uses the reported data to calculate deposit insurance assessments and monitor the condition, performance, and risk profile of individual insured branches and the banking industry. Insured branches must also submit annually such information on small business and small farm lending as the FDIC may need to assess the availability of credit to these sectors of the economy. Because the Board of Governors of the Federal Reserve System collects and processes this report on behalf of the FDIC, the report forms and instructions can be obtained from Federal Reserve District Banks or through the website of the Federal Financial Institutions Examination Council, *http://www.ffiec.gov/.*

(c) *Summary of Deposits, Form FDIC 8020/05.* Form 8020/05 is a report on the amount of deposits for each authorized office of an insured depository institution with branches; institutions with only a main office are exempt from reporting. Reports as of June 30 of each year must be submitted no later than the immediately succeeding July 31. The report forms and the instructions for completing the reports will be furnished to all such institutions by, or may be obtained upon request from, the Division of Insurance and Research (DIR), FDIC, 550 17th Street NW, Washington, DC 20429.

(d) *Notification of Performance of Bank Services, Form FDIC 6120/06.* Pursuant to section 7 of the Bank Service Company Act (12 U.S.C. 1867), as amended, FDIC-supervised institutions must notify the agency about the existence of a service relationship within thirty days after the making of the contract or the performance of the service, whichever occurs first. Form FDIC 6120/06 may be used to satisfy the notice requirement. The form contains identification, location, and contact information for the institution, the servicer, and a description of the services provided. In lieu of the form, notification may be provided by letter. Either the form or the letter containing the notice information must be submitted to the regional director—Division of Risk Management Supervision (RMS) of the region in which the institution's main office is located.

(Approved by the Office of Management and Budget under control numbers 3064–0052, 7100–0032, 3064–0061, and 3064–0029, respectively)

§§ 304.4–304.10 [Reserved]

Subpart B—Implementation of Reduced Reporting Requirement

Authority: 12 U.S.C. 1464(v), 1817(a), and 1819 Tenth.

§ 304.11 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to 12 U.S.C. 1464(v), and section 7 (12 U.S.C. 1817(a)(12)) and section 9 (12 U.S.C. 1819 Tenth) of the Federal Deposit Insurance Act.

(b) *Purpose.* This subpart implements 12 U.S.C. 1817(a)(12) to allow reduced reporting for a covered depository institution when such institution makes its reports of condition for the first and third calendar quarters of a year.

(c) *Scope.* This subpart applies to an insured depository institution, as that term is defined in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), that meets the definition of a covered depository institution under § 304.12.

(d) *Preservation of authority.* Nothing in this subpart in any way limits the authority of the Corporation under other provisions of applicable law and regulation.

§ 304.12 Definitions.

(a) *Covered depository institution* means an insured depository institution, as such term is defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, for which the Corporation is the appropriate Federal banking agency and that meets all of the following criteria:

(1) Has less than $5 billion in total consolidated assets as reported in its report of condition for the second calendar quarter of the preceding year;

(2) Has no foreign offices, as defined in this section;

(3) Is not required to or has not elected to use 12 CFR part 324, subpart E, to calculate its risk-based capital requirements;

(4) Is not a large institution or highly complex institution, as such terms are defined in 12 CFR 327.8, or treated as a large institution, as requested under 12 CFR 327.16(f); and

(5) Is not a state-licensed insured branch of a foreign bank, as such terms are defined in section 3(s) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(s).

(b) *Foreign country* refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States.

(c) *Foreign office* means:

(1) A branch or consolidated subsidiary in a foreign country, unless the branch is located on a U.S. military facility;

(2) An international banking facility as such term is defined in 12 CFR 204.8;

(3) A majority-owned Edge Act or Agreement subsidiary including both its U.S. and its foreign offices; and

(4) For an institution chartered or headquartered in any U.S. state or the District of Columbia, a branch or consolidated subsidiary located in a U.S. territory or possession.

(d) *Report of condition* means the FFIEC 031, FFIEC 041, or FFIEC 051 versions of the Consolidated Report of Condition and Income (Call Report) or the FFIEC 002 (Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks), as applicable, and as they may be amended or superseded from time to time in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

(e) *Total consolidated assets* means total assets as reported in an insured depository institution's report of condition.

§ 304.13 Reduced reporting.

A covered depository institution may file the FFIEC 051 version of the report of condition, or any successor thereto, which shall provide for reduced reporting for the reports of condition for the first and third calendar quarters for a year.

§ 304.14 Reservation of authority.

Notwithstanding § 304.13, the Corporation, in consultation with the applicable state chartering authority, may require an otherwise eligible covered depository institution to file the FFIEC 041 version of the report of condition, or any successor thereto, based on an institution-specific determination. In making this determination, the Corporation may consider criteria including, but not limited to, whether the institution is significantly engaged in one or more complex, specialized, or other higher-risk activities, such as those for which limited information is reported in the FFIEC 051 version of the report of condition compared to the FFIEC 041 version of the report of condition. Nothing in this part shall be construed to limit the Corporation's authority to obtain information from insured depository institutions.

Dated: June 3, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, June 13, 2019.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 7, 2019.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2019–12985 Filed 6–20–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 117 and 507

[Docket No. FDA–2018–D–0671]

Determining the Number of Employees for Purposes of the "Small Business" Definition (Current Good Manufacturing Practices and Preventive Controls Regulations for Human and Animal Food): Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry describing the Agency's current thinking on how to determine the number of employees for purposes of the ''small business'' definition in the current good manufacturing practice (CGMP), hazard analysis, and risk-based preventive controls for human and animal food rules. The guidance will help industry subject to these rules determine the number of employees for purposes of the ''small business'' definition.

DATES: The announcement of the guidance is published in the **Federal Register** on June 21, 2019.

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–0671 for ''Determining the Number of Employees for Purposes of the 'Small Business' Definition in Parts 117 and 507 (CGMP and Preventive Controls Regulations for Human and Animal Food): Guidance for Industry.'' 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 the guidance to the Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

For questions relating to CGMP, Hazard Analysis, and Risk-Based Preventive Controls for Human Food: Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2166.

For questions relating to CGMP, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals: Jeanette Murphy, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6246.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Determining the Number of Employees for Purposes of the 'Small Business' Definition in Parts 117 and 507 (CGMP and Preventive Controls Regulations for Human and Animal Food): Guidance for Industry.'' We are issuing the guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. 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.

This guidance concerns two regulations that we have established in

Title 21 of the Code of Federal Regulations (21 CFR) as part of our implementation of the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353). These two regulations are part 117 (21 CFR part 117) (September 17, 2015, 80 FR 55907) and part 507 (21 CFR part 507) (September 17, 2015, 80 FR 51670). Under parts 117 and 507, whether a business is a ''small business'' has two main implications. First, certain small businesses are exempt from the human food preventive controls requirements and the animal food preventive controls requirements if they are engaged only in specified low-risk activity/food combinations. Second, small businesses have later compliance dates for parts 117 and 507 than larger businesses. This guidance provides additional information to assist businesses in determining their status as a ''small business.''

In the **Federal Register** of March 20, 2018 (83 FR 12143), we made available a draft guidance for industry entitled ''Determining the Number of Employees for Purposes of the 'Small Business' Definition in Parts 117 and 507: Guidance for Industry'' and gave interested parties an opportunity to submit comments by May 21, 2018, for us to consider before beginning work on the final version of the guidance. We received no substantive comments on the draft guidance and are issuing the guidance with editorial changes to improve clarity and revision of one example to improve usefulness. The guidance announced in this notice finalizes the draft guidance dated March 2018.

II. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: June 17, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–13223 Filed 6–20–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

Reporting, Procedures and Penalties Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing this interim final rule to amend the Reporting, Procedures and Penalties Regulations (the Regulations) to provide updated instructions and incorporate new requirements for parties filing reports on blocked property, unblocked property, or rejected transactions. In addition, OFAC is revising the licensing procedures section of the Regulations to include information regarding OFAC's electronic license application procedures and to provide additional instructions regarding applications for the release of blocked funds. OFAC also is clarifying the rules governing the availability of information under the Freedom of Information Act (FOIA) for information that is submitted to OFAC pursuant to the Regulations. Finally, OFAC is making numerous technical and conforming edits throughout the Regulations.

DATES: This interim final rule is effective June 21, 2019. Written comments may be submitted on or before July 22, 2019.

ADDRESSES: You may submit comments by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions on the website for submitting comments. Refer to Docket Number OFAC–2019–0003.

Fax: Attn: Request for Comments (Amendments to OFAC's Reporting, Procedures and Penalties Regulations) 202–622–1759.

Mail: Attn: Request for Comments (Amendments to OFAC's Reporting, Procedures and Penalties Regulations), Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Refer to Docket Number OFAC–2019–0003.

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Background

The Regulations set forth standard reporting and recordkeeping requirements and license application and other procedures relevant to the economic sanctions programs administered by OFAC. OFAC is updating six sections of the Regulations.

Reports on Blocked and Unblocked Property

OFAC is revising § 501.603 of the Regulations, which covers reports on blocked property, to provide greater detail regarding the information required to be provided to OFAC in connection with blocking reports and to expand this section to cover reports on the release of property from blocked status (*i.e.,* unblocked property), as well as to make certain technical and conforming changes related thereto. As a general matter, in the past, when a submitter has not provided sufficient information to identify blocked or unblocked property and to determine the authority or authorities under which it was blocked or unblocked, OFAC has requested follow up information from the submitter, sometimes requiring multiple requests. OFAC is expanding the information listed in § 501.603 that is required to be submitted in reports on blocked property in an effort to clarify what information is needed to reduce the need for follow up requests from OFAC and in order to lessen the overall reporting burden for submitters.

Initial blocking reports. The expanded instructions for initial blocking reports require submitters to include the following information: (1) The name and address of the person holding the blocked property and a contact person from whom additional information may be obtained; (2) a description of any transaction associated with the blocking, including certain identifying information; (3) the associated sanctions target(s) whose property is blocked or a reference to the relevant written communication from OFAC if there is no associated target or that target is unknown; (4) a description of the property that is the subject of the blocking and its location; (5) the date the property was blocked; (6) the actual, or if unknown, estimated value of the property in U.S. Dollars; (7) the legal authority or authorities under which the property is blocked and the action taken with respect to the property (*e.g.,* that the property has been deposited into a new or existing blocked, interest-bearing account); and (8) a copy of any payment or transfer instructions or other relevant documentation.

Annual reports of blocked property. In the case of annual reports of blocked property, § 501.603 will require submitters to include the following information: (1) The name and address of the person holding the blocked property and a contact from whom additional information may be obtained; (2) the number of accounts or items reported in the annual report; (3) the associated sanctions target(s) whose property is blocked or a reference to the relevant written communication from OFAC if there is no associated target or that target is unknown; (4) a description of the property that is the subject of the blocking and its location; (5) the date the property was blocked; (6) the actual, or if unknown, estimated value of the property in U.S. Dollars; and (7) the legal authority or authorities under which the property is blocked.

Annual report format. OFAC is revising § 501.603(b)(2) to provide additional information regarding the required format for submitting annual reports of blocked property. Specifically, reports must be submitted either using the most recent version of Form TDF 90–22.50, Annual Report of Blocked Property, or by another official reporting option, including electronic, as specified by OFAC on its website. OFAC is updating Form TDF 90–22.50 in connection with the amendment of the Regulations to align the form with the revised requirements of the Regulations. The changes to Form TDF 90–22.50 are also being made in an effort to reduce the need for follow up requests from OFAC in order to lessen the overall reporting burden for submitters. Requests to submit the information required pursuant to § 501.603(b)(2) in an alternate format will be considered by OFAC on a case-by-case basis. OFAC is adding a new requirement for submitters of annual reports of blocked property who maintain blocked funds in omnibus accounts, requiring that annual reports contain a disaggregated list showing each blocked asset contained within the omnibus account. This new requirement to include disaggregated information in the annual reports begins with the 2020 annual reports, which are due no later than September 30, 2020.

Reports on property that is unblocked. OFAC is incorporating into § 501.603 certain requirements regarding reports on the release of property from blocked status (*i.e.,* property that is unblocked). These reports are only due when specifically required by OFAC, such as when they are made a condition of a general or specific license, and must be filed within 10 business days from the date such property is unblocked or as otherwise specified by OFAC. When a report is required, § 501.603(b)(3) will now require submitters to include the following information: (1) The name and address of the person holding the property immediately prior to the property's release from blocked status and a contact from whom additional information may be obtained; (2) the associated sanctions target(s) whose property had been previously blocked or a reference to the relevant written communication from OFAC if there is no associated target or that target is unknown; (3) a description of the property and its location immediately prior to its release from blocked status, including certain required identifying information; (4) the date the property was unblocked; (5) the actual, or if unknown, estimated value of the property that was released from blocked status in U.S. Dollars; (6) the legal authority or authorities under which the property was unblocked; and (7) when available, a copy of the original blocking report filed with OFAC pursuant to § 501.603(b)(1). OFAC is making several technical and conforming changes throughout § 501.603 to reflect these additional requirements.

Electronic submission of reports. OFAC is revising § 501.603 to allow for the submission of all reports on blocked or unblocked property by email, U.S. mail, or any other official reporting option, including electronic, as specified by OFAC on its website (*http://www.treasury.gov/ofac*). OFAC strongly prefers to receive reports made pursuant to this section by email or any other official electronic reporting option, as specified by OFAC on its website (*http://www.treasury.gov/ofac*).

Rules regarding the availability of information. Finally, OFAC is adding a new paragraph to § 501.603 to clarify the rules regarding the availability of information, under the FOIA. Specifically, information provided to OFAC pursuant to § 501.603 is subject to the FOIA and, generally, will be released upon the receipt of a valid FOIA request, unless OFAC determines that such information should be withheld in accordance with an applicable FOIA exemption.

Reports on Rejected Transactions

OFAC is revising § 501.604, which covers reports on rejected transactions, to: Clarify that this section applies broadly to all rejected transactions (and not only to rejected funds transfers); provide greater detail regarding the information to be provided to OFAC in connection with reports on rejected transactions; where to report such information; and make certain technical and conforming changes.

Clarification of scope of transactions to be reported. OFAC is replacing references to ''rejected funds transfers'' with references to ''rejected transactions'' and is adding a definition for the term ''transactions'' in order to provide additional clarity. Rejected transactions covered under this revised section include rejected transactions related to wire transfers, trade finance, securities, checks, foreign exchange, and goods or services. OFAC also has made a number of technical and conforming changes throughout § 501.604 to clarify that rejected transaction reporting is not limited to rejected funds transfers.

Information to be included in reports. OFAC is also revising § 501.604 to provide expanded instructions on the information to be submitted in reports on rejected transactions. As a general matter, in the past, when a submitter has not provided sufficient information to identify a transaction and the authority or authorities under which the transaction was rejected, OFAC has requested follow up information from the submitter, sometimes requiring multiple requests. OFAC is expanding its instructions on the information to be submitted in reports on rejected transactions in an effort to reduce the need for follow up requests from OFAC and in order to lessen the overall reporting burden for submitters. Submitters must now include the following information: (1) The name and address of the person that rejected the transaction and a contact from whom additional information may be obtained; (2) a description of the rejected transaction, including certain required identifying information; (3) if applicable, the associated sanctions target(s) whose involvement in the transaction has resulted in the transaction being rejected and its location, if known; (4) the date the transaction was rejected; (5) the actual, or if unknown, estimated value of the property in U.S. Dollars; (6) the legal authority or authorities under which the transaction was rejected; and (7) a copy of any related payment or transfer instructions or other relevant documentation.

Electronic submission of reports. OFAC is revising § 501.604 to allow for the submission of rejected transaction reports by email, U.S. mail, or any other official reporting option, including electronic, as specified by OFAC on its website ((*http://www.treasury.gov/ofac*). OFAC strongly prefers to receive reports made pursuant to this section by email or any other official electronic reporting option, as specified by OFAC on its website ((*http://www.treasury.gov/ofac*).

Rules regarding the availability of information. Finally, OFAC is adding a new paragraph to § 501.604 to clarify the rules regarding the availability of information pursuant to the FOIA. Specifically, information provided to OFAC pursuant to § 501.604 is subject to the FOIA and, generally, will be released upon the receipt of a valid FOIA request, unless OFAC determines that such information should be withheld in accordance with an applicable FOIA exemption.

Licensing Procedures

OFAC is revising § 501.801, which describes licensing procedures, to include information regarding OFAC's electronic license application procedures and to make a number of technical and conforming changes. Specifically, OFAC is revising § 501.801 to require that applications for specific licenses to engage in any transactions otherwise prohibited pursuant to 31 CFR chapter V or sanctions programs administered by OFAC be filed through OFAC's Reporting and License Application Forms page (*https://licensing.ofac.treas.gov/*) or by mail. Applications for the unblocking of funds must be submitted by one of these means using Form TD–F 90–22.54, ''Application for the Release of Blocked Funds,'' or in another format that contains all of the information requested in Form TD–F 90–22.54. Form TD–F 90–22.54 may be obtained from OFAC's Reporting and License Application Forms page. OFAC also is revising this section to remove the provision governing registration for non-governmental organizations, as this process has been phased out in favor of standard licensing procedures. In addition, OFAC is revising this section to clarify the rules governing the availability, under the FOIA, of information submitted to OFAC pursuant to § 501.801.

Other Technical and Conforming Changes

OFAC is revising § 501.602, which covers reports to be furnished on demand, to provide additional clarity by adding references to electronic documents, and adding a new paragraph defining the term ''document'' for purposes of this section. OFAC is adding a new requirement that any persons providing documents to OFAC pursuant to § 501.602 must produce the documents in a usable format agreed upon by OFAC. To provide guidance as to what will be considered a usable format, OFAC is also adding a reference in the regulations to newly updated guidance regarding data delivery standards and the submission of documents, which is available on OFAC's website (*http://www.treasury.gov/ofac*).

In addition, OFAC is revising paragraph (a) of § 501.701, which describes penalties for willful violations of the Trading with the Enemy Act (TWEA). Specifically, OFAC is adjusting the penalties as required by Section 107(a)(4) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195, 124 Stat. 1312) (CISADA).

Finally, OFAC is revising § 501.806, which describes procedures for unblocking funds believed to have been blocked due to mistaken identity, to require a party who believes that funds have been blocked due to mistaken identity send requests to release funds to OFAC in writing either by U.S. mail or electronically to OFAC's reports email address (*OFACreport@treasury.gov*). OFAC is also making a number of technical and conforming changes to this section.

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website (*http://www.treasury.gov/ofac*).

Public Participation

These amendments are being published as an interim final rule with an effective date of June 21, 2019. Because the amendment of the Regulations is a rule of agency procedure and because it involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply. Although notice and comment procedures are not required, OFAC invites comments on this interim final rule.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collections of information related to the existing Regulations have been previously approved by the Office of Management and Budget under control number 1505–0164. This interim final rule modifies certain of the collections of information under the Regulations. Specifically, in § 501.603, OFAC is modifying the information to be collected and the format and means of submission for reports on blocked property—both initial reports and annual reports—and is adding requirements regarding the information to be collected and the format and means of submission for reports on previously blocked property that has been unblocked. In § 501.604, OFAC is modifying the information to be collected and the format and means of submission for reports on rejected transactions. OFAC is also clarifying the breadth of the existing requirement for reporting on rejected funds transfers.

These modifications to the collections of information under the Regulations, and certain forms available as a means to report such information, have been submitted to the Office of Management and Budget (OMB) for review and approval under control number 1505–0164.

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

The likely respondents and record-keepers affected by these collections of information collections contained in part 501 are financial institutions, business organizations, nonprofit organizations, individuals, and legal representatives.

Since OFAC's last filing, OFAC has reviewed and revised its methodology to more accurately estimate the reporting burden as set forth below. The burden of the recordkeeping requirement imposed by 501.601 is minimal because the records required to be maintained should already be maintained under standard business practice.

Based on a general review of its databases and using OFAC's enhanced methodology and updated data, OFAC's estimate for the number of unique reporting respondents is approximately 6,900. The estimated total annual reporting burden is approximately 14,850 hours. Accordingly, the estimated annual hourly burden per respondent is approximately 2.2 hours. The estimated annual frequency of responses is between 1 and 3,300, varying greatly by entity depending on the size, nature, and scope of business activities of each respondent. The estimated total number of responses per year is approximately 31,601 responses.

OFAC assesses that there is an average time estimate for reports associated with forms ranging from 15 minutes to 2 hours and for reports associated with general licenses and other miscellaneous reports ranging from 1 to 5 hours.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques and other forms of information technology; and (e) the estimated capital or start-up costs of the operation, maintenance, and/or purchase of services to provide information. Comments concerning the above information and the accuracy of these burden estimates, and suggestions for reducing this burden, should be directed to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs (OIRA), Washington, DC 20503 or by email to: *OIRA_Submission@omb.eop.gov,* with a copy to Chief of Records, Attention: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Any such comments should be submitted not later than July 22, 2019. All comments on these collections of information will be a matter of public record.

List of Subjects in 31 CFR Part 501

Administrative practice and procedure, Banks, banking, Blocking of assets, Foreign trade, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 501 to read as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 is revised as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 22 U.S.C. 2370(a), 6009, 6032, 7205; 28 U.S.C. 2461 note; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. 4301–4341341; Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551).

Subpart C—Reports

■ 2. Revise § 501.602 to read as follows:

§ 501.602 Reports to be furnished on demand.

(a) Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Office of Foreign Assets Control, complete information relative to any act or transaction, regardless of whether such act or transaction is effected pursuant to license or otherwise, subject to the provisions of this chapter or relative to any property in which any foreign country or any national thereof has or had any interest of any nature whatsoever, direct or indirect. The Office of Foreign Assets Control may require that such reports include the production of any books, contracts, letters, papers, or other hard copy or electronic documents relating to any such act, transaction, or property, in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before, during, or after such transactions. Except as provided in parts 596 and 597, the Office of Foreign Assets Control may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of any books, contracts, letters, papers, and other hard copy or electronic documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

(b) For purposes of paragraph (a) of this section, the term ''document'' includes any written, recorded, or graphic matter or other means of preserving thought or expression (including in electronic format), and all tangible things stored in any medium from which information can be processed, transcribed, or obtained directly or indirectly, including correspondence, memoranda, notes, messages, contemporaneous communications such as text and instant messages, letters, emails, spreadsheets, metadata, contracts, bulletins, diaries, chronological data, minutes, books, reports, examinations, charts, ledgers, books of account, invoices, air waybills, bills of lading, worksheets, receipts, printouts, papers, schedules, affidavits, presentations, transcripts, surveys, graphic representations of any kind, drawings, photographs, graphs, video or sound recordings, and motion pictures or other film.

(c) Persons providing documents to OFAC pursuant to this section must produce documents in a usable format agreed upon by OFAC. For guidance, see OFAC's data delivery standards available on OFAC's website (*http://www.treasury.gov/ofac*).

Note 1 to § 501.602: See subpart F of part 597 for the relationship between this section and part 597.

■ 3. Revise § 501.603 to read as follows:

§ 501.603 Reports on blocked and unblocked property.

(a) *Who must report*—(1) *Holders of blocked property.* Any U.S. person (or person subject to U.S. jurisdiction), including a financial institution, holding property blocked pursuant to this chapter or releasing property from blocked status (*i.e.,* unblocking property) pursuant to this chapter shall submit the relevant reports described in this section to the Office of Foreign Assets Control (OFAC). This requirement applies to all U.S. persons (or persons subject to U.S. jurisdiction) who have or have had in their possession or control any property blocked pursuant to this chapter, including financial institutions that receive and block payments or transfers.

(2) *Primary responsibility to report.* A report may be filed on behalf of a holder of blocked property or a releaser of property from blocked status by an attorney, agent, or other person. Primary responsibility for reporting, however, rests with the actual holder or releaser of the property, or the person exercising control over property located outside the United States, with the following exceptions: Primary responsibility for reporting any trust assets rests with the trustee; and primary responsibility for reporting real property rests with any U.S. co-owner, legal representative, agent, or property manager in the United States. No person is excused from filing a report by reason of the fact that another person has submitted a report with regard to the same property, except upon actual knowledge of the report filed by such other person.

(3) *Financial institution.* For purposes of this section, the term ''financial institution'' includes a banking institution, domestic bank, United States depository institution, financial institution, or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

(b) *What must be reported*—(1) *Initial blocking reports*—(i) *When reports are* *due.* Reports shall be filed within 10 business days from the date that property becomes blocked.

(ii) *Required information to be reported.* Initial reports on blocked property shall include the following:

(A) The name and address of the person holding the property blocked pursuant to this chapter (*i.e.,* the person filing the report on blocked property, such as a financial institution), and the name, telephone number, and email address of a contact from whom additional information may be obtained;

(B) A description of any transaction associated with the blocking, including: The type of transaction; any persons, including financial institutions, participating in the transaction and their respective locations (*e.g.,* if relevant, customers, beneficiaries, originators, letter of credit applicants, and their banks; intermediary banks; correspondent banks; issuing banks; and advising or confirming banks); and any reference numbers, dates, or other information necessary to identify the transaction;

(C) The associated sanctions target(s) whose property is blocked (such as a Specially Designated National or other blocked person), the location(s) of the target(s) (if known), and, if not evident, a narrative description of the interest(s) of the target(s) in the property; if there is no target or the target is not known, include a reference to the relevant written communication from OFAC pursuant to which the blocking action was taken;

(D) A description of the property that is the subject of the blocking and its location in the United States or otherwise, including any relevant account numbers and account types, check numbers, reference numbers, dates, or other information necessary to identify the property;

(E) The date the property was blocked;

(F) The actual, or if unknown, estimated value of the property in U.S. Dollars. If the blocked property represents an outstanding loan, a credit card receivable, or other property with a negative balance, the amount blocked should be reported as $0.00 (zero) with the amount owed reflected in a narrative description. Blocked trade finance documents should also be reported as $0.00 (zero) with the value of the shipment reflected in a narrative description. Transactions blocked in foreign currencies must be reported in U.S. Dollars with the foreign currency amount and notional exchange rate in the narrative;

(G) The legal authority or authorities under which the property is blocked and any action taken with respect to the property (*e.g.,* that the property has been deposited into a new or existing blocked, interest-bearing account that is labeled as such and is established in the name of, or contains a means of clearly identifying the interest of, the person subject to blocking pursuant to the requirements of this chapter). This may include a reference to the sanctions program (current programs are listed here: *www.treasury.gov/resource-center/sanctions/SDN-List/Pages/program_tags.aspx*), the applicable part of this chapter (*e.g.,* 31 CFR part 515, 31 CFR part 544), an Executive order (E.O.) (*e.g.,* E.O. 13224, E.O. 13599), or a statute (*e.g.,* Foreign Narcotics Kingpin Designation Act). (*Note:* For this purpose, the term ''SDN'' is generic and cannot be used to identify the legal authority for blocking property); and

(H) A copy of any payment or transfer instructions, check, letter of credit, accompanying bill of lading, invoice, or any other relevant documentation received in connection with any related transaction.

(2) *Annual reports of blocked property*—(i) *When reports are due.* A report on all blocked property held as of June 30 of the current year shall be filed annually by September 30.

(ii) *Required information to be reported.* Annual reports on blocked property shall include the following:

(A) The name and address of the person holding the property blocked pursuant to this chapter (*i.e.,* the person filing the report on blocked property, such as a financial institution), and the name, telephone number, and email address of a contact from whom additional information may be obtained;

(B) The number of accounts or items reported in the annual report;

(C) Beginning with the annual report due no later than September 30, 2020, and for each subsequent reporting year, the associated sanctions target(s) whose property is blocked, such as a Specially Designated National or other blocked person, the location(s) of the target(s), if known, and, if not evident, a narrative description of the interest(s) of the target(s) in the transaction; if there is no target or the target is not known, include a reference to the relevant written communication from OFAC pursuant to which the blocking action was taken;

(D) A description of the property that is the subject of the blocking and its location in the United States or otherwise, including any relevant account numbers and account types, check numbers, reference numbers, dates, or other information necessary to identify the property;

(E) The date the property was blocked;

(F) The actual, or if unknown, estimated value of the property in U.S. Dollars as of June 30. If a June 30 value date is not available and a value date other than June 30 is reported, so indicate. If the blocked property represents an outstanding loan, a credit card receivable, or other property with a negative balance, the amount blocked should be reported as $0.00 (zero) with the amount owed reflected in a narrative description. Blocked trade finance documents should also be reported as $0.00 (zero) with the value of the shipment reflected in a narrative description. Transactions blocked in foreign currencies must be reported in U.S. Dollars with the foreign currency amount and notional exchange rate in the narrative; and

(G) The legal authority or authorities under which the property is blocked. This may include a reference to the sanctions program (current programs are listed here: *www.treasury.gov/resource-center/sanctions/SDN-List/Pages/program_tags.aspx*), the applicable part of this chapter (*e.g.,* 31 CFR part 515, 31 CFR part 544), an Executive order (E.O.) (*e.g.,* E.O. 13224, E.O. 13599), or a statute (*e.g.,* Foreign Narcotics Kingpin Designation Act). (*Note:* For this purpose, the term ''SDN'' is generic and cannot be used to identify the legal authority for blocking property).

(iii) *Format of annual reports.* Annual reports shall be submitted to OFAC either using the most recent version of Form TDF 90–22.50, Annual Report of Blocked Property, or by another official reporting option, including electronic, as specified by OFAC on its website (*http://www.treasury.gov/ofac*). While blocked funds may be maintained in omnibus accounts, the annual reports must contain a disaggregated list showing each blocked asset contained within the omnibus account. Form TDF 90–22.50 may be obtained directly from OFAC by downloading the form from the OFAC Reporting and License Application Forms page on OFAC's website (*https://www.treasury.gov/resource-center/sanctions/Pages/forms-index.aspx*). Requests to submit the information required pursuant to § 501.603(b)(2)(ii) in an alternative format developed by the reporter are invited and will be considered by OFAC on a case-by-case basis. A copy of reports submitted pursuant to § 501.603(b)(2) shall be retained for the submitter's records.

(3) *Unblocking reports*—(i) *When reports are due.* These reports are only due when specifically required by OFAC, such as when they are made a

condition of a general or specific license, and shall be filed within 10 business days from the date property is unblocked.

(ii) *Required information to be reported.* Reports on the release of property from blocked status (*i.e.,* property that is unblocked) shall include the following:

(A) The name and address of the person holding the property immediately prior to the property's release from blocked status (*i.e.,* the person filing the unblocking report, such as a financial institution), and the name, telephone number, and email address of a contact from whom additional information may be obtained;

(B) The associated sanctions target(s) whose property had been previously blocked and was released from blocked status, such as a Specially Designated National or other blocked person, the location(s) of the target(s), if known, and, if not evident, a narrative description of the interest(s) of the target(s) in the previously blocked property or transaction; if there is no target or the target is not known, include a reference to the relevant written communication from OFAC pursuant to which the blocking action was taken;

(C) A description of the property that has been unblocked and its location in the United States or otherwise immediately prior to its release from blocked status, including any relevant account numbers and account types, check numbers, reference numbers, dates, or other information necessary to identify the property;

(D) The date the property was unblocked;

(E) The actual value of the property that was released from blocked status in U.S. Dollars. If the property represented an outstanding loan, a credit card receivable, or other property with a negative balance, the amount unblocked should be reported as $0.00 (zero) with the amount owed reflected in a narrative description. Trade finance documents should also be reported as $0.00 (zero) with the value of the shipment reflected in a narrative description. Transactions that were previously blocked in foreign currencies and were unblocked in a foreign currency must be reported in U.S. Dollars with the foreign currency amount and notional exchange rate in the narrative;

(F) The legal authority or authorities under which the property was unblocked. This may include, for example, reference to a specific or general license under an applicable part of this chapter or an E.O.; and

(G) A copy of the original blocking report filed with OFAC pursuant to § 501.603(b)(1), when available.

(c) *Reports on retained funds pursuant to § 596.504(b) of this chapter.* The reporting requirements set forth in this section are applicable to any person retaining funds pursuant to § 596.504(b) or releasing such funds.

(d) *Where to report.* All reports under this section shall be submitted to OFAC using one of the following methods: Email: *OFACreport@treasury.gov;* U.S. mail: Office of Foreign Assets Control, Sanctions Compliance and Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Freedman's Bank Building, Washington, DC 20220; or any other official reporting option, including electronic, as specified by OFAC on its website (*http://www.treasury.gov/ofac*). OFAC strongly prefers to receive reports made pursuant to this section by email or any other official electronic reporting option, as specified by OFAC on its website.

(e) *Rules governing availability of information.* OFAC records are made available to the public in accordance with the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the provisions of 31 CFR part 1. *See* 31 CFR 1.5 for provisions pertaining to business information. Reports on blocked and unblocked property and the information required to be reported to OFAC pursuant to this section are subject to the FOIA. Information provided to OFAC pursuant to this section generally will be released upon the receipt of a valid FOIA request, unless OFAC determines that such information should be withheld in accordance with an applicable FOIA exemption.

■ 4. Revise § 501.604 to read as follows:

§ 501.604 Reports on rejected transactions.

(a) *Who must report*—(1) *Persons rejecting transactions.* Any U.S. person (or person subject to U.S. jurisdiction), including a financial institution, that rejects a transaction that is not blocked under the provisions of this chapter, but where processing or engaging in the transaction would nonetheless violate a provision contained in this chapter, shall submit a report to the Office of Foreign Assets Control (OFAC).

(2) *Financial institution.* For purposes of this section, the term ''financial institution'' includes a banking institution, domestic bank, United States depository institution, financial institution, or U.S. financial institution, as those terms are defined in the applicable part of this chapter.

(3) *Transaction.* The term transaction includes transactions related to wire transfers, trade finance, securities, checks, foreign exchange, and goods or services.

(b) *Required information to be reported.* Reports on rejected transactions shall include the following:

(1) The name and address of the person that rejected the transaction pursuant to this chapter (*i.e.,* the person filing the report on the rejected transaction, such as a financial institution), and the name and telephone number of a contact from whom additional information may be obtained;

(2) A description of the rejected transaction, including the type of transaction; any persons, including financial institutions, participating in the transaction and their respective locations (*e.g.,* customers, beneficiaries, originators, letter of credit applicants, and their banks; intermediary banks; correspondent banks; issuing banks; and advising or confirming banks); a description of the property that is the subject of the transaction; and any reference numbers, account numbers, dates, or other information necessary to identify the transaction;

(3) If applicable, the associated sanctions target(s) whose involvement in the transaction has resulted in the transaction being rejected, the location(s) of the associated sanctions target(s), if known, and, if not evident, a narrative description of the interest(s) of the target(s) in the transaction;

(4) The date the transaction was rejected;

(5) The actual, or if unknown, estimated value of the property in U.S. Dollars. Rejected trade documents should be reported as $0.00 (zero) with the value of the shipment reflected in a narrative description. Rejected transactions in foreign currencies must be reported in U.S. Dollars with the foreign currency amount and notional exchange rate in a narrative description;

(6) The legal authority or authorities under which the transaction was rejected. This may include a reference to the sanctions program (current programs are listed here: *www.treasury.gov/resource-center/sanctions/SDN-List/Pages/program_tags.aspx*), the applicable part of this chapter (*e.g.,* 31 CFR part 515, 31 CFR part 544), an Executive Order (E.O.) (*e.g.,* E.O. 13224, E.O. 13599), or a statute (*e.g.,* Foreign Narcotics Kingpin Designation Act). (Note: For this purpose, the term ''SDN'' is generic and cannot be used to identify the legal authority or authorities for rejecting transactions); and

(7) A copy of any related payment or transfer instructions, check, letter of credit, accompanying bill of lading, invoice, or any other relevant documentation received in connection with the transaction.

(c) *When reports are due.* Reports shall be filed within 10 business days of the rejected transaction prohibited by the provisions of this chapter.

(d) *Where to report.* Reports under this section shall be submitted to OFAC using one of the following methods: Email: *OFACreport@treasury.gov;* U.S. mail: Office of Foreign Assets Control, Sanctions Compliance and Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Freedman's Bank Building, Washington, DC 20220; or any other official reporting option, including electronic, as specified by OFAC on its website (*http://www.treasury.gov/ofac*). OFAC strongly prefers to receive reports made pursuant to this section by email or any other official electronic reporting option, as specified by OFAC on its website.

(e) *Rules governing availability of information.* OFAC records are made available to the public in accordance with the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the provisions of 31 CFR part 1. *See* 31 CFR 1.5 for provisions pertaining to business information. Reports on rejected transactions and the information required to be reported to OFAC pursuant to this section are subject to the FOIA. Information provided to OFAC pursuant to this section generally will be released upon the receipt of a valid FOIA request, unless OFAC determines that such information should be withheld in accordance with an applicable FOIA exemption.

Subpart D—Trading With the Enemy Act (TWEA) Penalties

■ 5. Amend § 501.701 by revising paragraph (a)(1) to read as follows:

§ 501.701 Penalties.

(a) * * *

(1) Persons who willfully violate any provision of TWEA or any license, rule, or regulation issued thereunder, and persons who willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of TWEA shall, upon conviction, be fined not more than $1,000,000 or, if an individual, be imprisoned for not more than 20 years, or both.

* * * * *

Subpart E—Procedures

■ 6. Revise § 501.801 to read as follows:

§ 501.801 Licensing.

(a) *General licenses.* General licenses may be issued authorizing, under appropriate terms and conditions, certain types of transactions that are subject to the prohibitions contained in this chapter. General licenses also may be issued authorizing, under appropriate terms and conditions, certain types of transactions that are subject to prohibitions contained in economic sanctions programs the implementation and administration of which have been delegated to the Director of the Office of Foreign Assets Control (OFAC) but which are not yet codified in this chapter. General licenses are set forth in subpart E of each part contained in this chapter or made available on OFAC's website: *https://www.treasury.gov/resourcecenter/sanctions/Programs/Pages/Programs.aspx.* It is the policy of OFAC not to grant applications for specific licenses authorizing transactions to which the provisions of a general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses. Failure to file timely all required information in such reports or statements may nullify the authorization otherwise provided by the general license and result in apparent violations of the applicable prohibitions that may be subject to OFAC enforcement action.

(b) *Specific licenses*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in this chapter, or to prohibitions the implementation and administration of which have been otherwise delegated to the OFAC Director, that are not authorized by general license may be effected only under specific license.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this chapter, or sanctions programs that have been otherwise delegated to the OFAC Director for implementation and administration, must be signed, either manually or electronically, and filed through OFAC's Reporting and License Application Forms page (*https://licensing.ofac.treas.gov/*) or, if that option is unavailable, by mail, addressed to the Office of Foreign Assets Control, Licensing Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Applications for the unblocking of funds may be submitted via OFAC's Reporting and License Application Forms page (*https://licensing.ofac.treas.gov/*) or, if that option is unavailable, by using Form TD–F 90–22.54, ''Application for the Release of Blocked Funds,'' or via a submission that otherwise contains all of the information provided for in Form TD–F 90–22.54. Form TD–F 90–22.54 may be obtained from OFAC's Reporting and License Application Forms page, or by mail at the address above.

(i) *Additional conditions.* Applicants should submit only one copy of a specific license application to OFAC; submitting multiple copies may result in processing delays. Any person having an interest in a transaction or proposed transaction may file an application for a specific license authorizing such a transaction.

(ii) *Information to be supplied.* The applicant must supply all information specified by relevant instructions (available on OFAC's Reporting and License Application Forms page at *https://licensing.ofac.treas.gov*) and/or forms, and must fully disclose the names of all parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his or her principal(s). Such documents as may be relevant shall be attached to each application as a part of such application, whether filed electronically or by mail, except that documents previously filed with OFAC may, where appropriate, be incorporated by reference in such application. Applicants may be required to furnish such further information as is deemed necessary to assist OFAC in making a determination. Any applicant or other party in interest desiring to present additional information may do so at any time before or after OFAC makes its decision with respect to the application. In unique circumstances, OFAC may determine that an oral presentation regarding a license application would assist in OFAC's review of the issues involved. Any requests to make such an oral presentation must be submitted in writing to the attention of the Director, but are rarely granted.

(3) *Issuance of specific license.* Specific licenses normally will be issued by OFAC. Specific licenses also may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

(4) *Reports under specific licenses.* As a condition for the issuance of any specific license, the licensee may be

required to file reports with respect to the transactions authorized by the specific license in such form and at such times and places as may be prescribed in the license or otherwise. Reports should be sent in accordance with the instructions provided in the applicable specific license.

(5) *Effect of denial.* The denial of a specific license does not preclude the reconsideration of an application or the filing of a further application. The applicant or any other party in interest may at any time request, by written correspondence, reconsideration of the denial of an application on the basis of new facts or changed circumstances.

(6) *Rules governing availability of information.* OFAC records are made available to the public in accordance with the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the provisions of 31 CFR part 1. *See* 31 CFR 1.5 for provisions pertaining to business information. License applications submitted to OFAC and specific licenses issued by OFAC are subject to the FOIA and generally will be released upon the receipt of a valid FOIA request, unless OFAC determines that such information should be withheld in accordance with an applicable FOIA exemption.

Note 1 to paragraph (b)(6): OFAC views information submitted in furtherance of an application for a specific license pursuant to this paragraph (b) to be required information for purposes of Exemption 4 of the FOIA.

■ 7. Amend § 501.806 by revising paragraph (b) to read as follows:

§ 501.806 Procedures for unblocking funds believed to have been blocked due to mistaken identity.

* * * * *

(b) Requests to release funds which a party believes to have been blocked due to mistaken identity must be made in writing and addressed to the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or sent by email to the Sanctions Compliance & Evaluation Division at *OFACreport@treasury.gov.*

* * * * *

Dated: June 17, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–13163 Filed 6–20–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 242a

[Docket ID: DOD–2019–OS–0021]

RIN 0790–AK36

Public Meeting Procedures of the Board of Regents, Uniformed Services University of the Health Sciences

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the Department of Defense (DoD) regulation, not updated since December 20, 1977, regarding the administrative policies and procedures on establishing and providing notice on advisory committee meetings of the Board of Regents (BOR), Uniformed Services University of the Health Sciences (University). This includes definitions and instructions for both open and closed meetings. The BOR is now a federal advisory committee, and its policies and procedures do not require rulemaking. Therefore, this rule is outdated and unnecessary and can be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on June 21, 2019.

FOR FURTHER INFORMATION CONTACT: Steven J. Weiss, Associate General Counsel, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Room A–1030. Email: *steven.weiss@usuhs.edu.* Telephone: (301) 295–3028. Facsimile: (301) 295–6681.

SUPPLEMENTARY INFORMATION: In support of a recommendation from the DoD Regulatory Reform Task Force, DoD is removing this regulation, which contains public meeting procedures of the BOR. This rule was first published March 7, 1977 (42 FR 12853), and most recently amended on December 20, 1977 (42 FR 63775). Section 8091 of Public Law 101–511 (November 5, 1990) transferred all authorities from the BOR to the Secretary of Defense and stated ''. . . the Board hereafter shall be an advisory board to the Secretary of Defense.'' Since the 1990 change, the BOR complies with the Federal Advisory Committee Act (5 U.S.C. App.), the General Services Administration's Federal Advisory Committee Management Final Rule (41 CFR part 102–3), and 10 U.S.C. 2113a, rendering this rule unnecessary.

On March 28, 2019 (84 FR 11754), DoD published a notice in the **Federal Register** to announce that it is renewing the charter of the BOR. The BOR's charter and contact information for the BOR's Designated Federal Officer can be found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.* It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest because it removes only outdated and unnecessary information from the CFR.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 242a

Medical and dental schools, Sunshine Act.

PART 242a—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 242a is removed.

Dated: June 17, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–13198 Filed 6–20–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 242b

[Docket ID: DOD–2019–OS–0020]

RIN 0790–AK37

General Procedures and Delegations of the Board of Regents, Uniformed Services University of the Health Sciences

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the Department of Defense (DoD) regulation, not updated since March 23, 1989, relating to the general procedures and delegations of authority of the Board of Regents (BOR), Uniformed Services University of the Health Sciences' (University), which includes the composition of the BOR, administrative procedures for its meetings, and voting requirements. The regulation also identifies a standing committee of the BOR, officers of the BOR and the

University, and rules for amending the BOR's procedures. Because the BOR is now a federal advisory committee, its policies and procedures do not require rulemaking, and it no longer appoints officers of the University. Therefore, this rule is outdated, unnecessary and can be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on June 21, 2019.

FOR FURTHER INFORMATION CONTACT: Steven J. Weiss, Associate General Counsel, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Room A–1030. Email: *steven.weiss@usuhs.edu.* Telephone: (301) 295–3028. Facsimile: (301) 295–6681.

SUPPLEMENTARY INFORMATION: In support of a recommendation from the DoD Regulatory Reform Task Force, DoD is removing this regulation, which contains administrative procedures for the BOR and sets forth certain officers of the University to be appointed by the BOR. This rule was first published on January 19, 1978 (42 FR 63775) and last updated on March 23, 1989 (54 FR 11946). Since that time, section 8091 of Public Law 101–511 (November 5, 1990) transferred all authorities from the BOR to the Secretary of Defense and stated ''. . . the Board hereafter shall be an advisory board to the Secretary of Defense.'' Since the 1990 change, the BOR complies with the Federal Advisory Committee Act (5 U.S.C. App.), the General Services Administration's Federal Advisory Committee Management Final Rule (41 CFR part 102–3), and 10 U.S.C. 2113a. Further, the BOR no longer appoints officers of the University. Accordingly, this part is outdated and unnecessary.

On March 28, 2019 (84 FR 11754), DoD published a notice in the **Federal Register** to announce that it is renewing the charter of the BOR. The BOR's charter and contact information for the BOR's Designated Federal Officer can be found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing outdated and unnecessary information from the CFR.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 242b

Medical and dental schools, Organization and functions (Government agencies).

PART 242b—[REMOVED]

Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 242b is removed.

Dated: June 17, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–13197 Filed 6–20–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0857]

RIN 1625–AA09

Drawbridge Operation Regulation; St. Johns River, Putnam County, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Buffalo Bluff CSX Railroad Bridge across the St. Johns River, mile 94.5, at Satsuma, Putnam County, FL. The rule allows the bridge to be remotely monitored and operated from the CSX Railroad Bridge across the Ortega River (McGirts Creek) located at mile 1.1 on the Ortega River. The rule also allows the draw to remain in the full, open position unless a train is in the circuit.

DATES: This rule is effective July 22, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Type USCG–2017–0857 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Emily T. Sysko, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone 904–714–7616, email *Emily.T.Sysko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of proposed rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On April 27, 2018, we published a temporary deviation entitled ''Drawbridge Operation Regulation; St. Johns River, Putnam County, FL'' in the **Federal Register** (82 FR 08866). We received no comments on this rule. On March 5, 2019, we published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulation; St. Johns River, Putnam County, FL'' in the **Federal Register** (82 FR 03904). We received no comments on this rule.

III. Legal Authority and Need for Rule

The bridge owner, CSX Transportation, requested the Coast Guard consider allowing remote operation of the Buffalo Bluff CSX Railroad Bridge across the St. Johns River, mile 94.5, at Satsuma, Putnam County, Florida. The Buffalo Bluff CSX Railroad Bridge across the St. Johns River, Putnam is a bascule bridge. The bridge is currently manned and maintained in the open position. It has a vertical clearance of 7 feet at mean high water in the closed position and a horizontal clearance of 90 feet.

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard is modifying the operating schedule that governs the Buffalo Bluff CSX Railroad Bridge across St. Johns River, mile 94.5, at Satsuma, Putnam County, FL. The bridge is currently manned and maintained in the open position.

This rule allows the bridge to be remotely monitored and operated. Visual monitoring of the waterway shall be maintained with the use of cameras and the detection of vessels under the span shall be accomplished with detection sensors. Marine radio communication shall be maintained with mariners near the bridge for the safety of navigation. The remote tender may also be contacted via telephone at (386) 649–8538. The span is normally in the fully open position and will display green lights to indicate that the span is fully open. When a train approaches, the remote tender shall monitor for vessels approaching the bridge. The remote tender shall warn approaching vessels via marine radio, channel 9 VHF of a bridge lowering. Provided the sensors do not detect a vessel under the span, the tender shall initiate the span lowering sequence, which includes the sounding of a horn and the displaying of red lights. The span will remain in the down position for a minimum of eight minutes or for the entire time the approach track circuit is occupied. After the train has cleared the bridge track circuit, the span shall open and the green lights will be displayed. This rule allows vessels to pass through the bridge while taking into account the reasonable needs of other modes of transportation.

On April 27, 2017, the Coast Guard published a notice of temporary deviation from drawbridge regulation with request for comments in the **Federal Register** (82 FR 08886) to test proposed changes. The Coast Guard provided a comment period of 109 days and no comments were received during the test period. On March 5, 2019, we published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulation; St. Johns River, Putnam County, FL'' in the **Federal Register** (82 FR 03904). The Coast Guard provided a comment period of 60 days and no comments were received.

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 protesters.

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, it 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 following reasons: (1) The draw will remain open for vessel traffic except when trains are passing; and (2) vessels that can transit under the bridge without an opening may do so at anytime.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 received no comments from the Small Business Administration on this rule. 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.

While some owners or operators of vessels intending to transit the bridge 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**, above.

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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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.

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 Management Directive 023–01 and U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series), which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have made a determination 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 promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.325 by adding paragraph (c) to read as follows:

§ 117.325 St. Johns River.

* * * * *

(c) The draw for the Buffalo Bluff CSX automated Railroad Bridge, St. Johns River, mile 94.5 at Satsuma, Putnam County, FL shall operate as follows:

(1) The bridge is not tendered locally, but will be operated and monitored by a remote tender.

(2) The bridge shall have local and mechanical override capabilities over the remote operation.

(3) Marine radio communication shall be maintained with mariners near the bridge for the safety of navigation. Visual monitoring of the waterway shall be maintained with the use of cameras and the detection of vessels under the span shall be accomplished with detection sensors.

(4) The span is normally in the fully open position and will display green lights to indicate that the span is fully open.

(5) When a train approaches, the remote tender shall monitor for vessels approaching the bridge. The remote tender shall warn approaching vessels via marine radio, channel 9 VHF of a bridge lowering. The remote tender may also be contacted via telephone at (386) 649–8538.

(6) Provided the sensors do not detect a vessel under the span, the tender shall initiate the span lowering sequence, which includes the sounding of a horn and the displaying of red lights. The span will remain in the down position for a minimum of eight minutes or for the entire time the approach track circuit is occupied.

(7) After the train has cleared the bridge track circuit, the span shall open and the green lights will be displayed.

Dated: June 11, 2019.

Peter J. Brown,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2019–13205 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0388]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (Halifax River), Daytona Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the Memorial Bridge (Veteran's Memorial/Orange Ave/CR 4050) across the Atlantic Intracoastal Waterway (Halifax River), mile 830.6, at Daytona Beach, FL. The drawbridge was removed in 2018 and is being replaced with a fixed bridge. The operating regulation is no longer applicable or necessary.

DATES: This rule is effective June 21, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0388. In the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Jennifer Zercher, Bridge Administration Branch, United States Coast Guard District Seven; telephone 305–415–6740, email *jennifer.n.zercher@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FL Florida
FR Federal Register
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this final 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), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because Veteran's Memorial Bridge, that once required draw operations in 33 CFR 117.261(g), was removed from the Atlantic Intracoastal Waterway (Halifax River) in 2018 and is being replaced with a fixed bridge. Therefore, the regulation is no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

We are issuing this rule under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge has been removed from the waterway for one year and this rule merely requires an administrative change to the **Federal Register**, in order to omit a regulatory requirement that is no longer applicable or necessary. The modification has already taken place and the removal of the regulation will not affect mariners currently operating on this waterway. Therefore, a delayed effective date is unnecessary.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Veteran's Memorial Bridge was removed in 2018 and is being replaced with a fixed bridge in 2019. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation, 33 CFR 117.261(g), pertaining to the former drawbridge.

IV. Discussion of Final Rule

The Coast Guard is changing regulation in 33 CFR 117.261 by removing restrictions and the regulatory burden related to draw operations for a bridge that is no longer a drawbridge. The change removes § 117.261(g) of the regulation governing the Veteran's Memorial Bridge, since the bridge has been removed from the waterway and is being replaced with a fixed bridge. This Final Rule seeks to update the Code of Federal Regulations by removing language that governs the operation of the Veteran's Memorial Bridge, which is no longer a drawbridge. This change does not affect waterway or land traffic. This change does not affect nor does it alter the operating schedules in 33 CFR 117.261 governing the remaining active drawbridges on the Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

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 protesters.

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, it 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 fact the bridge was removed from the waterway and the replacement structure will be a fixed bridge. The removal of the operating schedule from 33 CFR 117 subpart B will have no effect on the movement of waterway or land traffic.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

For the reasons stated in section IV.A above this final rule would 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**, above.

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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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.

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 Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

A Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

§ 117.261 [Amended]

■ 2. Amend § 117.261 by removing and reserving paragraph (g).

Dated: June 11, 2019.

Peter J. Brown,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2019–13207 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0461]

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone within the Chicago Harbor during

specified times on October 23, 2019. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after firework displays. During the enforcement period listed below, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: The regulation in 33 CFR 165.931 will be enforced from 9:25 p.m. through 9:45 p.m. on October 23, 2019.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL listed in 33 CFR 165.931, on October 23, 2019 from 9:25 p.m. through 9:45 p.m. This safety zone encompasses all waters of Lake Michigan within Chicago Harbor bounded by coordinates beginning at 41°53′23.3″ N, 087°36′04.5″ W; then south to 41°53′11.8″ N, 087°36′04.1″ W; then west to 41°53′12.1″ N, 087°35′40.5″ W; then north to 41°53′23.6″ N, 087°35′40.07″ W; then east back to the point of origin (NAD 83). 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.

This notice of enforcement is issued under authority of 33 CFR 165.931 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the above-specified enforcement periods of this safety zone via Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port Lake Michigan or a designated on-scene representative may be contacted via Channel 16, VHF–FM or at (414) 747–7182.

Dated: June 14, 2019.

Thomas J. Stuhlreyer,

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

[FR Doc. 2019–13183 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0458]

Safety Zone; Seafair Air Show Performance, 2019, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the annual Seafair Air Show Performance safety zone on Lake Washington, Seattle, WA daily, from 8 a.m. until 4 p.m., from August 1, 2019, through August 4, 2019. This action is necessary to ensure the safety of the public from inherent dangers associated with these annual aerial displays. During the enforcement period, no person or vessel may enter or transit this safety zone unless authorized by the Captain of the Port or her designated representative.

DATES: The regulations in 33 CFR 165.1319 will be enforced daily, from 8 a.m. until 4 p.m., from August 1, 2019, through August 4, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Lieutenant Ellie Wu, Sector Puget Sound Waterways Management Division, Coast Guard; telephone (206) 217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Seafair Air Show Performance safety zone in 33 CFR 165.1319 daily, from 8 a.m. until 4 p.m., from August 1, 2019, through August 4, 2019, unless canceled sooner by the Captain of the Port.

Under the provisions of 33 CFR 165.1319, the following area is designated as a safety zone: All waters of Lake Washington south of the Interstate 90 Floating West Bound Bridge and north of the points between Bailey Peninsula at 47°33′14.4″ N, 122°14′47.3″ and Mercer Island at 47°33′24.5″ N, 122°13′52.5″ W. The specific boundaries of the safety zone are listed in 33 CFR 165.1319(b).

In accordance with the general regulations in 33 CFR part 165, subpart C, no person or vessel may enter or remain in the zone except for support vessels and support personnel, vessels registered with the event organizer, or other vessels authorized by the Captain of the Port or Designated Representatives. Vessels and persons granted authorization to enter the safety zone must obey all lawful orders or directions made by the Captain of the Port or her designated representative.

The Captain of the Port may be assisted by other federal, state and local law enforcement agencies in enforcing this regulation.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advanced notification of the safety zone via the Local Notice to Mariners and marine information broadcasts on the day of the event. If the COTP determines that the safety zone need not be enforced for the full duration stated in this notice of enforcement, she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 18, 2019.

L.A. Sturgis,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2019–13274 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0123]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Ohio River, and Upper Mississippi River, Bird's Point-New Madrid Floodway

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Lower Mississippi River from mile marker (MM) 953.8 to MM 887.0, the Upper Mississippi River from MM 0.0 to MM 3.0, and the Ohio River from MM 981.5 to MM 978.5. This action is necessary to protect persons, property, and infrastructure from potential damage and the safety hazards associated with the demolition of federal levees on the Lower Mississippi River and utilization of the Bird's Point-New Madrid Floodway. This rule prohibits the entry of vessels or persons into this temporary safety zone unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective July 22, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0123 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 proposed rulemaking, call or email MST2 Dylan Caikowski, MSU Paducah, U.S. Coast Guard; telephone 270–442–1621 ext. 2120, email *STL-SMB-MSUPaducah-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 purpose of this rule is to ensure the safety of vessels on the navigable waters of the Lower Mississippi River, Upper Mississippi River, and Ohio River during high water event. The United States Army Corps of Engineers informed us that it might deem it necessary to demolish certain federal levees on the Lower Mississippi River and utilize the Bird's Point-New Madrid Floodway, to maintain the integrity of the Lower Mississippi River, Upper Mississippi River, Ohio River, and all associated tributaries. During this time, a temporary safety zone on the Lower Mississippi River, Upper Mississippi River, and Ohio River would be necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with the demolition of federal levees on the Lower Mississippi River and utilization of the Bird's Point-New Madrid Floodway. In response, on March 25, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled *Safety Zone; Lower Mississippi River, Ohio River, and Upper Mississippi River, Bird's Point-New Madrid Floodway* (84 FR 11035). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this potential demolition of the federal levees on the Lower Mississippi River and utilization of the Bird's Point-New Madrid Floodway. During the comment period that ended April 24, 2019, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the demolition of the federal levees on the Lower Mississippi River and re-stabilization of the waterway is a safety concern for anyone in the vicinity of the Lower Mississippi River from MM 953.8 to MM 887.0, the Upper Mississippi River from MM 0.0 to MM 3.0, and the Ohio River from MM 981.5 to MM 978.5.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published March 25, 2019. The comment affirmed the need for a safety zone during the demolition of the federal levees to protect people and vessels. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary safety zone on all navigable waters of the Lower Mississippi River from MM 953.8 MM 887.0, the Upper Mississippi River from MM 0.0 to MM 3.0, and the Ohio River from MM 981.5 to MM 978.5, in the event of the demolition of the federal levees on the Lower Mississippi River and utilization of the Bird's Point-New Madrid Floodway. The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone through Local Notices to Mariners (LNMs), and/or actual notice.

No vessels or persons are permitted to enter the proposed safety zone without obtaining permission from the COTP or a designated representative.

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-day of the temporary safety zone. The safety zone only impacts a relatively small portion of the waterway and will only be in effect during the demolition process and approximately 36 hours after the demolition to allow for stabilization of the waterway. After approximately 36 hours, vessels would be allowed to transit. Additionally, the safety zone will be limited to the high water event if the U.S. Army Corps of Engineers deems it necessary to demolish the federal levees on the Lower Mississippi River and utilize the Bird's Point-New Madrid Floodway.

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 received no comments from the Small Business Administration on this rulemaking. 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.

While some owners or operators of vessels intending to transit the temporary 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 Order13132.

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.

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 Environmental Planning COMDTINST 5090.1 (series), 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 a safety zone on all waters of the Lower Mississippi River from MM 953.8 to MM 887.0, the Upper Mississippi River from MM 0.0 to MM 3.0, and the Ohio River from MM 981.5 to MM 978.5, during demolition of the federal levees on the Lower Mississippi River and utilization of the Bird's Point-New Madrid Floodway. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. 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 record keeping 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: 46 U.S.C. 70034, 70051; 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.T846 to read as follows:

§ 165.T846 Safety Zone; Lower Mississippi River, Ohio River, and Upper Mississippi River, Bird's Point-New Madrid Floodway.

(a) *Location.* The temporary safety zone will encompass all navigable waters of the Lower Mississippi River from mile marker (MM) 953.8 to MM 887.0, the Upper Mississippi River from MM 0.0 to MM 3.0, and the Ohio River from MM 981.5 to MM 978.5.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

(2) To seek permission to enter, contact the COTP or a designated representative by radio VHF–FM Channel 16 or via phone at 502–779–5422. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or a designated representative.

(c) *Enforcement period.* The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone through Local Notices to Mariners (LNMs), and/or actual notice.

Dated: June 17, 2019.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2019–13179 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0474]

Safety Zone; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone—City of Kewaunee Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone on the Kewaunee Harbor, Kewaunee, WI, for the City of Kewaunee Fireworks Display from 9 p.m. through 10 p.m. on July 3, 2019. This action is needed to better protect the safety of life on navigable waters immediately prior to, during, and after the fireworks display. During the enforcement period, 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 representative.

DATES: The regulations in 33 CFR 165.929 for the City of Kewaunee

Fireworks Display, listed as item (e)(52) in Table 165.929, will be enforced from 9 p.m. through 10 p.m. on July 3, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email marine event coordinator MST1 Kaleena Carpino, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone (414) 747–7148, email *D09-SMB-SECLakeMichigan-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the City of Kewaunee Fireworks Display safety zone listed as item (e)(52) in Table 165.929 of 33 CFR 165.929 from 9 p.m. through 10 p.m. on July 3, 2019, on all waters of Lake Michigan and Kewaunee Harbor within the arc of a circle with a 1,000-foot radius from the fireworks launch site in position 44°27.481′ N, 087°29.735′ 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 a designated on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.929 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard plans to provide the maritime community with advance notification for the enforcement of this safety zone via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan or a designated representative will inform the public through a Broadcast Notice to Mariners of any changes in the planned schedule. The Captain of the Port Lake Michigan or a representative may be contacted via Channel 16, VHF–FM, or via telephone (414) 747–7182.

Dated: June 14, 2019.

Thomas J. Stuhlreyer,

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

[FR Doc. 2019–13184 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0324]

RIN 1625–AA00

Safety Zone; Columbia River, Fireworks Umatilla, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Columbia River near Umatilla, OR. This action is necessary to provide for the safety of life on these navigable waters during a fireworks display on June 22, 2019. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative.

DATES: This rule is effective from 9 p.m. to 11:15 p.m. on June 22, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0324 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 rule, call or email LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *msupdxwwm@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 Umatilla Chamber of Commerce notified the Coast Guard that it will be conducting a fireworks display from 10 p.m. to 10:15 p.m. on June 22, 2019, to commemorate the town's history and anniversary. The fireworks will launch from a site over the Columbia River in Umatilla, OR. In response, on May 17, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Columbia River, Fireworks Umatilla, OR'' (84 FR 22403). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended June 3, 2019, we received no comments.

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 be impracticable because the Coast Guard needs to have a safety zone regulation in place by June 22, 2019, to respond to the potential safety hazards associated with the fireworks display on that date.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). Captain of the Port Columbia River (COTP) has determined that potential hazards associated with the fireworks to be used in this June 22, 2019 display will be a safety concern for anyone within a 450-yard radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published May 17, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 9 p.m. to 11:15 p.m. on June 22, 2019. The safety zone would cover all navigable waters of the Columbia River within 450-yards of the discharge site located at 45°55′39″ N, 119°19′46″ W, in vicinity of Umatilla, OR. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10 p.m. to 10:15 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Columbia River for approximately two hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter 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 received no comments from the Small Business Administration on this rulemaking. 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.

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.

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 Environmental Planning COMDTINST 5090.1 (series), 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 a safety zone lasting less than two and a half hours that would prohibit entry within 450 yards of the fireworks discharge site.

It is categorically excluded from further review under paragraph L60(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: 46 U.S.C. 70034, 70051; 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.T13–0324 to read as follows:

§ 165.T13–0324 Safety Zone; Columbia River, Fireworks Umatilla, OR.

(a) *Safety zone.* The following area is designated a safety zone: Waters of the Columbia River, within a 450-yard radius of the fireworks discharge site located at 45°55′39″ N, 119°19′46″ W in vicinity of Umatilla, OR.

(b) *Regulations.* Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Columbia River or his designated representative. Also in accordance with § 165.23, no person may bring into, or allow to remain in this safety zone any vehicle, vessel, or object unless authorized by the Captain of the Port Columbia River or his designated representative.

(c) *Enforcement period.* This section will be enforced from 9 p.m. to 11:15 p.m. on June 22, 2019.

Dated: June 17, 2019.

J.C. Smith,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2019–13191 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0512]

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone—Chicago Air and Water Show

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Chicago Air and Water Show on a portion of Lake Michigan, from August 15, 2019 through August 18, 2019. This action is intended to protect the safety of life on the navigable waterway immediately before, during, and after this event. During the enforcement period listed below, no vessel may transit this safety zone without approval from the Captain of the Port, Lake Michigan or a designated representative.

DATES: The regulations in 33 CFR 165.929 will be enforced for the location listed in item (f)(9), Table 165.929 from 9 a.m. through 4 p.m. on August 15, 2019; and from 8:30 a.m. through 5 p.m. from August 16, 2019 through August 18, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT John Ramos, Waterways Management Division, Marine Safety Unit Chicago, at 630–986–2155, email address *D09-DG-MSUChicago-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Air and Water Show listed as item (f)(9) in Table 165.929 of 33 CFR 165.929. Section 165.929 lists many annual events requiring safety zones in the Captain of the Port, Lake Michigan zone. This safety zone encompasses all waters and adjacent shoreline of Lake Michigan and Chicago Harbor bounded by a line drawn from 41°55.900′ N at the shoreline, then east to 41°55.900′ N, 087°37.200′ W, then southeast to 41°54.000′ N, 087°36.000′ W, then southwestward to the northeast corner of the Jardine Water Filtration Plant, then due west to the shore. This safety zone will be enforced from 9 a.m. through 4 p.m. on August 15, 2019; and from 8:30 a.m. through 5 p.m. from August 16, 2019 through August 18, 2019.

All vessels must obtain permission from the Captain of the Port, Lake Michigan, or his or her designated on-scene representative to enter, move within, or exit this safety zone during the enforcement times listed in this notice of enforcement. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case-by-case basis. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Lake Michigan, or a designated on-scene representative.

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 publication 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 a designated on-scene representative may be contacted via VHF Channel 16 or (414) 747–7182.

Dated: June 14, 2019.

Thomas J. Stuhlreyer,

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

[FR Doc. 2019–13267 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0432]

Security Zone; Seattle's Seafair Fleet Week Moving Vessels, 2019, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Seattle's Seafair Fleet Week Moving Vessels security zones from 10 a.m. on July 29, 2019, through 6 p.m. on August 4, 2019. These security zones are necessary to help ensure the security of the vessels from sabotage or other subversive acts during Seafair Fleet Week Parade of Ships. The designated participating vessels are: HMCS NANAIMO (MM 702), HMCS EDMONTON (MM 703), and USCGC ACTIVE (WMEC 618). During the enforcement period, no person or vessel may enter or remain in the security zones without the permission of the Captain of the Port (COTP), Puget Sound or her designated representative. The COTP has granted general permission for vessels to enter the outer 400 yards of the security zones as long as those vessels within the outer 400 yards of the security zones operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules.

DATES: The regulations in 33 CFR 165.1333 will be enforced from 10 a.m. July 29, 2019, through 6 p.m. on August 4, 2019, unless cancelled sooner by the Captain of the Port Puget Sound or her designated representative.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Lieutenant Ellie Wu, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the security zones for Seattle's Seafair Fleet Week Moving Vessels in 33 CFR 165.1333 from 10 a.m. on July 29, 2019, through 6 p.m. on August 4, 2019.

In accordance with the general regulations in 33 CFR part 165, subpart D, no person or vessel may enter or remain in the security zones without the permission of the Captain of the Port, Puget Sound or her designated representative. For 2019, the following areas are § 165.1333 security zones: All navigable waters within 500 yards of HMCS NANAIMO (MM 702), HMCS EDMONTON (MM 703), and USCGC ACTIVE (WMEC 618) while each such vessel is in the Sector Puget Sound COTP Zone.

The COTP has granted general permission for vessels to enter the outer 400 yards of the security zones as long as those vessels within the outer 400 yards of the security zones operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules. The COTP may be assisted by other federal, state or local agencies with the enforcement of the security zones.

All vessel operators who desire to enter the inner 100 yards of the security zones or transit the outer 400 yards at greater than minimum speed necessary to maintain course must obtain permission from the COTP or her designated representative by contacting the on-scene patrol craft on VHF Ch 13 or Ch 16. Requests must include the reason why movement within this area is necessary. Vessel operators granted permission to enter the security zones will be escorted by the on-scene patrol craft until they are outside of the security zones.

In addition to this notice of enforcement, the Coast Guard will provide the maritime community with advanced notification of the security zones via the Local Notice to Mariners and marine information broadcasts on the day of the event. In the event that there are changes to the participating vessels, due to operational requirements, the Coast Guard will provide actual notice for any additional designated participating vessels not covered in this notice.

In addition, members of the public may contact Sector Puget Sound COTP at 206–217–6002 for an up-to-date list of designated participating vessels. If the COTP determines that the security zones need not be enforced for the full duration stated in this notice of enforcement, a Broadcast Notice to Mariners may be used to grant general permission to enter all portions of the regulated areas.

Dated: June 18, 2019.

L.A. Sturgis,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2019–13272 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0315]

Safety Zone; Lower Mississippi River, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a temporary safety zone for a fireworks display located on the navigable waters of the Lower Mississippi River between Mile Marker (MM) 94.3 and MM 95.3. This action is needed to provide for the safety of life on these navigable waterways during this event. During the enforcement period, the operator of any vessel in the safety zone must comply with directions from the Captain of the Port Sector New Orleans or a designated representative.

DATES: The regulations in 33 CFR 165.801, Table 5, Line 3 will be enforced from 8:30 p.m. through 9:30 p.m. on July 4, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Lieutenant Commander Benjamin Morgan, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2281, email *Benjamin.P.Morgan@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a temporary safety zone in 33 CFR 165.801, Table 5, line 3, for the Riverfront Marketing Group Independence Day celebration fireworks display event. This regulation will be enforced from 8:30 p.m. through 9:30 p.m. on July 4, 2019. This action is needed to provide for the safety of life on these navigable waterways during this event. Our regulation for marine events within the Eighth Coast Guard District, 33 CFR 165.801, specifies the location of the regulated area on the Lower Mississippi River, between Mile Marker (MM) 94.3 and MM 95.3. During the enforcement period, as reflected in § 165.801, if you are the operator of a vessel in the temporary safety zone, you must comply with directions from the Captain of the Port Sector New Orleans or a designated representative.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via a Broadcast Notice to Mariners.

Dated: June 17, 2019.

W.E. Watson,

Captain, U.S. Coast Guard, Acting Captain of the Port Sector New Orleans.

[FR Doc. 2019–13206 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0459]

Safety Zone; Fleet Week Maritime Festival, Pier 66, Elliot Bay, Seattle, Washington

AGENCY: Coast Guard, DHS.

ACTION: Notice of non-enforcement of regulation.

SUMMARY: The Coast Guard does not plan to enforce the Fleet Week Maritime Festival's Pier 66 Safety Zone in Elliott Bay, WA in 2019. The Captain of the Port has determined that enforcement of this regulation is not presently needed to ensure participant and spectator safety for this year's Fleet Week Maritime Festival. During this year's Fleet Week Maritime Festival, entry into, transit through, mooring, or anchoring within this safety zone is authorized unless directed otherwise by the Captain of the Port, Puget Sound, or her designated representative.

DATES: The Coast Guard does not plan to enforce the regulations in 33 CFR 165.1330 in 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of non-enforcement, call or email Lieutenant Ellie Wu, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone (206) 217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard does not plan to enforce the safety zone for the Fleet Week Maritime Festival in 33 CFR 165.1330 in 2019. We normally enforce this regulation for the Parade of Ships during the festival, but do not plan to enforce it this year because based on the Captain of the Port's current assessment, enforcement of this regulation is not needed to ensure participant and spectator safety for this year's Fleet Week Maritime Festival.

In addition to this notice of non-enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advanced notification via the Local Notice to Mariners and marine information broadcasts. If the Captain of the Port determines that the regulated area needs to be enforced, she will issue a Broadcast Notice to Mariners and provide actual notice of enforcement.

Dated: June 18, 2019.

L.A. Sturgis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2019–13275 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0211]

RIN 1625–AA00

Safety Zone; Cuyahoga 50th Parade of Lights; Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving safety zone to provide for the safety of life on these navigable waters in the Cuyahoga River, Cleveland, OH, during the Cuyahoga 50th Parade of Lights on June 22, 2019. This temporary safety zone is necessary to protect personnel, vessels, and the marine environment from the potential hazards created by 125 vessels transiting in the river with decorative lights not normally used as navigation lights. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Buffalo.

DATES: This rule is effective from 9:15 p.m. until 11:15 p.m. on June 22, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0211 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 rule, call or email LT Ryan Junod, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0124, email *ryan.s.junod@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

On January 30, 2019, the Lake Erie Marine Trades Association notified the Coast Guard that it will be conducting a Boat Parade from 9:30 to 11:00 p.m. on June 22, 2019, to commemorate the 50th Anniversary of the Burning River. The boat parade will begin in Cleveland Harbor west basin and proceed upriver to Merwin's Wharf where they will turn around and head back down river to Lake Erie. In response, on April 26, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Cuyahoga 50th Parade of Lights; Cuyahoga River, Cleveland, OH (84 FR 17760). We stated why we proposed this rulemaking, and invited comments on our regulatory action related to this Boat Parade. During the comment period that ended May 28, 2019, we received one comment.

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 would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of persons and vessels near the boat parade.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Buffalo determined that potential hazards associated with 125 vessels displaying decorative lights that are not used for navigation will be a safety concern for other vessels underway. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the Cuyahoga 50th Parade of Lights.

IV. Discussion of Comments, Changes, and the Rule

We received one comment on our NPRM published April 26, 2019. The comment requested information on how the rule will be enforced, and how local communities are being notified. The rule will be enforced by U.S. Coast Guard Station personnel on behalf of the Captain of the Port Buffalo, the event was published in the Local Notice to Mariners and there will be a Broadcast Notice to Mariners for notification to the public. There are no changes in the regulatory text of this temporary final rule from the proposed rule in the NPRM due to the comments.

This rule establishes a safety zone from 9:30 p.m. through 11:15 p.m. on June 22, 2019. The moving safety zone will encompass all waters within 25 feet of the vessels participating in the Cuyahoga 50th Parade of Lights in the Cuyahoga River. The safety zone will move with participating vessels as they transit from the mouth of the Cuyahoga River in the vicinity of position 41°29′59″ N, 081°43′31″ W, to Merwin's Wharf in the vicinity of 41°29′23″ N, 081°42′16″ W, and returning to the mouth of the Cuyahoga River in the vicinity of 41°29′59″ N, 081°43′31″ W (NAD 83). Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port or a designated on-scene representative. The Captain of the Port or a 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 this rule not being 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 for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone is designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. 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 received no comments from the Small Business Administration on this rulemaking. 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.

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 Order13132.

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.

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 Environmental Planning COMDTINST 5090.1 (series), 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 a safety zone lasting two hours that will encompass all waters within 25 feet of the vessels participating in the Cleveland 50th Parade of Lights in the Cuyahoga River. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. 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: 46 U.S.C. 70034, 70051; 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.T09–0211 to read as follows:

§ 165.T09–0211 Safety Zone; Cuyahoga 50th Parade of Lights; Cuyahoga River, Cleveland, OH.

(a) *Location.* The moving safety zone will encompass all waters within 25 feet of the vessels participating in the Cleveland 50th Parade of Lights in the Cuyahoga River. The safety zone will move with participating vessels as they transit from the mouth of the Cuyahoga River in the vicinity of position 41°29′59″ N, 081°43′31″ W, to Merwin's Wharf in the vicinity of 41°29′23″ N, 081°42′16″ W, and returning to the mouth of the Cuyahoga River in the vicinity of 41°29′59″ N, 081°43′31″ W (NAD 83).

(b) *Effective and enforcement period.* This regulation is effective and will be enforced on June 22, 2019, from 9:15 p.m. until 11:15 p.m.

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

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who is designated by the Captain of the Port Buffalo to act on their behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or an on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or an on-scene representative may be contacted via VHF Channel 16 or at 716–843–9525. 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 Buffalo, or their on-scene representative.

Dated: June 18, 2019.

Joseph S. Dufresne,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2019–13261 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0472]

RIN 1625–AA00

Safety Zones; Milwaukee's July 3rd Fireworks, Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around three barges moored in Milwaukee Harbor in the vicinity of Pier Wisconsin. The safety zone is needed to protect personnel and vessels from potential hazards created by the outfall of the 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 8 p.m. through 11 p.m. July 3, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0472 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 rule, call or email the marine event coordinator, MSTC Kaleena Carpino, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (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 July 3, 2019.

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 Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Lake Michigan will enforce a safety zone from 8 p.m. through 11 p.m. on July 3, 2019, for a fireworks display on Lake Michigan in Milwaukee, WI. 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 8 p.m. through 11 p.m. on July 3, 2019. The safety zone will be enforced for all navigable waters within an area bounded by the following coordinates; at 43°02′32.9″ N 087°53′34.9″ W (NAD 83) continuing East across Milwaukee Harbor to 43°02′42.0″ N 087°53′06.0″ W (NAD 83) then South to 43°02′00.00″ N 087°53′06.0″ W (NAD 83) then West across the Milwaukee Harbor to 43°02′00.00″ N 087°53′41.0″ W (NAD 83) then North returning to the point of origin on Lake Michigan in Milwaukee, WI.

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 three 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.

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 and Environmental Planning COMDTINST 5090.1 (series), 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 a safety zone lasting only three hours that will prohibit entry within the established safety zone for the firework display. It is categorically excluded from further review under paragraph L[60](a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. 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: 46 U.S.C. 70034, 70051; 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.T09–0472 to read as follows:

§ 165.T09–0472 Safety Zone; Milwaukee's July 3rd Fireworks, Milwaukee Harbor, Milwaukee WI.

(a) *Location.* All navigable waters bounded by the following coordinates; at 43°02′32.9″ N 087°53′34.9″ W (NAD 83) continuing East across Milwaukee Harbor to 43°02′42.0″ N 087°53′06.0″ W (NAD 83) then South to 43°02′00.00″ N 087°53′06.0″ W (NAD 83) then West across the Milwaukee Harbor to 43°02′00.00″ N 087°53′41.0″ W (NAD 83) then North returning to the point of origin on Lake Michigan in Milwaukee, WI.

(b) *Effective and enforcement period.* This rule is effective and will be enforced from 8 p.m. through 11 p.m. on July 3, 2019.

(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: June 14, 2019.

Thomas J. Stuhlreyer,

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

[FR Doc. 2019–13185 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0412]

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone within the Chicago Harbor during specified times on September 6, 2019 and September 7, 2019. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after firework displays. During the enforcement periods listed below, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan or a designated representative.

DATES: The regulation in 33 CFR 165.931 will be enforced from 9:25 p.m. through 9:45 p.m. on September 6, 2019, and September 7, 2019.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL listed in 33 CFR 165.931, on September 06, 2019 and September 07, 2019 from 9:25 p.m. through 9:45 p.m. This safety zone encompasses all waters of Lake Michigan within Chicago Harbor bounded by coordinates beginning at 41°53′23.3″ N, 087°36′04.5″ W; then south to 41°53′11.8″ N, 087°36′04.1″ W; then west to 41°53′12.1″ N, 087°35′40.5″ W; then north to 41°53′23.6″ N, 087°35′40.07″ W; then east back to the point of origin (NAD 83). 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.

This notice of enforcement is issued under authority of 33 CFR 165.931 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 the above-specified enforcement periods of this safety zone via Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port Lake Michigan or a designated on-scene representative may be contacted via Channel 16, VHF–FM or at (414) 747–7182.

Dated: June 14, 2019.

Thomas J. Stuhlreyer,

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

[FR Doc. 2019–13180 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0421]

RIN 1625–AA00

Safety Zone; Ohio River, Miles 90.7 to 91.2, Wheeling, WV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Ohio River from mile 90.7 to mile 91.2. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a land based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by Captain of the Port Marine Safety Unit Pittsburgh.

DATES: This rule is effective from 9 p.m. through 10:30 p.m. on June 22, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0421 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 rule, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–221–0807, email *Jennifer.L.Haggins@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 it is impracticable. It is impracticable to complete the full NPRM process for this safety zone because we must establish the safety zone by June 22, 2019 and 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 this rule would be contrary to the public interest because immediate action is necessary to respond to the safety hazards associated with the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Marine Safety Unit Pittsburgh (COTP) has determined that a safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created from a land based firework display.

IV. Discussion of the Rule

This rule establishes a safety zone on June 22, 2019, from 9 p.m. through 10:30 p.m. The safety zone will cover all navigable waters on the Ohio River from mile 90.7 to mile 91.2. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created by a land based firework display.

No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of the COTP. To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through Marine Safety Unit Pittsburgh at 412–221–0807. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

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, and duration of the safety zone. This safety zone impacts a one mile stretch of the Ohio River for a limited duration of less than two hours. Vessel traffic will be informed about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue LNMs, MSIBs, and BNMs via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit 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.

While some owners or operators of vessels intending to transit the temporary 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 and Environmental Planning COMDTINST 5090.1 (series), 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 a safety zone lasting less than two hours that will prohibit entry on the Ohio River from mile 90.7 to mile 91.2 during a land based firework event. It is categorically excluded from further review under paragraph L60(a) of Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. 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: 46 U.S.C. 70034, 70051; 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.T08–0421 to read as follows:

§ 165.T08–0421 Safety Zone; Ohio River, Miles 90.7—91.2, Wheeling, WV.

(a) *Location.* The following area is a safety zone: all navigable waters of the Ohio River from mile 90.7 to mile 91.2

(b) *Effective period.* This section is effective from 9p.m. through 10:30 p.m. on June 22, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of persons and vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP or a designated representative. The COTP's representative may be contacted at 412–221–0807.

(3) All persons and vessels shall comply with the instructions of the COTP or a designated representative. Designated COTP representatives include United States Coast Guard commissioned, warrant, and petty officer.

(d) *Information broadcasts.* The Captain COTP or a designated representative will inform the public through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

A.W. Demo,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2019–13208 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0438]

Safety Zones; Fireworks Displays in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zones for six of the fireworks displays as described in the table to 33 CFR 165.506 on various dates on and around July 4, 2019. This action is necessary to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after the fireworks displays. During the enforcement periods, vessels may not enter, remain in, or transit through the safety zones during these enforcement periods unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene.

DATES: The regulation in 33 CFR 165.506 will be enforced for the safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, you may call or email Petty Officer Thomas Welker, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone 215–271–4814, email *Thomas.J.Welker@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce safety zones established in 33 CFR 165.506 for the following six fireworks displays during the dates, times, and at the locations listed in the following table:

DATES AND TIMES OF ENFORCEMENT OF CERTAIN 33 CFR 165.506 SAFETY ZONES FOR FIREWORKS DISPLAYS IN THE COAST GUARD SECTOR DELAWARE BAY COTP ZONE IN JULY 2019

Entry in the table to § 165.506	Date	Time	Location	Safety zone
(a)5	July 3, 2019 or rain date of July 5, 2019.	9 p.m. to 10 p.m	Barnegat Bay, Barnegat Township, NJ.	The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N, longitude 074°11′21″ W, approximately 500 yards north of Conklin Island, NJ.
(a)7	July 3, 2019 or rain date of July 5, 2019.	9:15 p.m. to 10:15 p.m.	Delaware Bay, North Cape May, NJ.	All waters of the Delaware Bay within a 360 yard radius of the fireworks barge in approximate position latitude 38°58′00″ N, longitude 074°58′30″ W.
(a)4	July 4, 2019 or rain date of July 5, 2019.	8:45 p.m. to 9:30 p.m	North Atlantic Ocean, Avalon, NJ.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°06′19.5″ N, longitude 074°42′02.15″ W, in the vicinity of the shoreline at Avalon, NJ.
(a)11	July 4, 2019 or rain date of July 5, 2019.	9:30 p.m. to 10:30 p.m.	North Atlantic Ocean, Ocean City, NJ.	The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16′22″ N, longitude 074°33′54″ W, in the vicinity of the shoreline at Ocean City, NJ.

DATES AND TIMES OF ENFORCEMENT OF CERTAIN 33 CFR 165.506 SAFETY ZONES FOR FIREWORKS DISPLAYS IN THE COAST GUARD SECTOR DELAWARE BAY COTP ZONE IN JULY 2019—Continued

Entry in the table to § 165.506	Date	Time	Location	Safety zone
(a)13	July 4, 2019	9:15 p.m. to 9:45 p.m	Little Egg Harbor, Parker Island, NJ.	All waters of Little Egg Harbor within a 500 yard radius of the fireworks barge in approximate position latitude 39°34′18″ N, longitude 074°14′43″ W, approximately 50 yards north of Parkers Island.
(a)16	July 4, 2019 or rain date of July 5, 2019.	9 p.m. to 10:30 p.m	Penn's Landing, Delaware River, Philadelphia PA.	All waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, within 500 yards of a fireworks barge at approximate position latitude 39°56′49″ N, longitude 075°08′11″ W.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of the enforcement periods via the Local Notice to Mariners and marine information broadcasts.

Dated: June 11, 2019.

Scott E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2019–13182 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–DEWA–25798; GPO Deposit Account 4311H2]

RIN 1024–AE46

Delaware Water Gap National Recreation Area; Removal of Outdated Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule removes special regulations for Delaware Water Gap National Recreation Area about rock climbing and commercial vehicles that are no longer necessary.

DATES: This rule is effective June 21, 2019.

FOR FURTHER INFORMATION CONTACT: Eric Lisnik, Chief Ranger, Delaware Water Gap National Recreation Area, 1978 River Road, Bushkill, PA 18324; (570) 426–2414; *eric_lisnik@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Delaware Water Gap National Recreation Area (the recreation area) is the largest natural area in the National Park System between Virginia and Maine and one of the largest protected natural areas in the metropolitan corridor extending from Washington, DC, to Boston, MA. Located near the New York City and Philadelphia metropolitan areas, and easily accessible by private vehicle, the recreation area offers a variety of recreational opportunities. These include hiking, swimming, fishing, hunting, boating, pleasure driving, and sight-seeing; learning about natural and cultural history; and enjoying the solitude of a rural environment and a change of pace. The waters of the Middle Delaware National Scenic & Recreational River are of exceptional quality. The 125 miles of the Delaware River that includes the Upper Delaware National Scenic & Recreational River, Delaware Gap National Recreation Area (Middle Delaware), and the Lower Delaware National Wild & Scenic River are classified as Special Protection Waters which have exceptionally high scenic, recreational and ecological values. The free-flowing Delaware River cuts through a narrow valley, and the adjacent lands contain streams and waterfalls, geologic features, a variety of plants and wildlife, and cultural resources. The National Park Service (NPS) administers the lands and waters within the recreation area to provide outdoor recreation opportunities while conserving the natural, cultural and scenic resources of the recreation area. In so doing, the NPS works cooperatively with surrounding communities and the public to achieve the conservation goals of the Delaware River region.

Regulatory Reform Initiative

On February 24, 2017, President Trump issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' This Executive Order established a regulatory reform initiative to alleviate unnecessary burdens placed on the American people. As part of the Department of the Interior's approach for implementing this initiative, the NPS is reviewing its regulations in order to identify those that should be repealed, replaced, or modified. These include regulations that are outdated or unnecessary.

Final Rule

The NPS has identified several special regulations applicable to the recreation area that are outdated and no longer enforced by the NPS. The NPS is removing these regulations to reduce a potential source of confusion for the public about what activities are allowed within the recreation area. These regulations are codified in 36 CFR 7.71(c)–(e) and address rock climbing and commercial vehicles.

Paragraph (c) requires visitors to register with the Superintendent prior to technical rock climbing. For the program to function properly climbers would register with the NPS prior to a climb, and then notify the NPS when the climb had safely concluded. The NPS found that the registration requirement triggered search missions that often were unfounded or unnecessary, because this registration system was not used properly by the public. As a result, the NPS determined that the costs associated with the program outweighed any potential benefits to public safety from its implementation. The registration requirement for technical rock climbing was operationally eliminated more than 25 years ago and has not been enforced since.

Paragraphs (d) and (e) identify the types of commercial vehicles that may be operated within DEWA and establish a fee schedule for those vehicles. The legislation authorizing the regulations about commercial vehicles has expired and was replaced in 2018 with a new Congressional authorization, Public Law 115–101 (January 8, 2018), that authorized the Superintendent to establish a fee and permit program. Commercial vehicle rules will now be published in the Superintendent's Compendium, which is available on the park's website at *www.nps.gov/dewa.* In order to reduce ambiguity in NPS regulations about the use of commercial vehicles within DEWA, this rule will state that, notwithstanding the general prohibition of commercial vehicles in 36 CFR 5.6, commercial vehicles are allowed in DEWA in accordance with applicable law. This rule will also state that the Superintendent will notify the public about rules related to commercial vehicles, including the requirements of the fee and permit program, using the methods set forth in 36 CFR 1.7.

Compliance With Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This rule is not an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The RFA does not apply to this final rule because the National Park Service is not required to publish a proposed rule for the reasons explained below with regard to the Administrative Procedure Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Administrative Procedure Act (Notice of Proposed Rulemaking and Effective Date)

We recognize that under 5 U.S.C. 553(b) and (c), notice of proposed rules ordinarily must be published in the **Federal Register** and the agency must give interested parties an opportunity to submit their views and comments. We have determined under 5 U.S.C. 553(b) and 318 DM HB 5.3, however, that notice and public comment for this rule are not required. We find good cause to treat notice and comment as unnecessary. As discussed above, the regulatory provisions being removed are outdated, unnecessary, and no longer enforced by the NPS. Maintaining these regulations is potentially confusing for the public. These regulatory changes will not benefit from public comment, and further delaying them is contrary to the public interest.

We also recognize that rules ordinarily do not become effective until at least 30 days after their publication in the **Federal Register**. We have determined, however, that good cause exists for this rule to be effective immediately upon publication for the reasons stated above.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects in not required.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and Recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under DC Code 10–137 and DC Code 50–2201.07.

■ 2. Amend § 7.71 by:
■ a. Revising paragraph (c)
■ b. Removing paragraphs (d), and (e).
■ c. Redesignating paragraph (f) as paragraph (a).
■ d. Redesignating paragraph (g) as paragraph (d).

The revisions to read as follows:

§ 7.71 Delaware Water Gap National Recreation Area.

* * * * *

(c) *Commercial vehicles.* Notwithstanding the prohibition of commercial vehicles set forth in § 5.6 of this chapter, commercial vehicles are authorized to use the portions of U.S. Highway 209 located within the Delaware Water Gap National Recreation Area in accordance with applicable law. The Superintendent will provide notice to the public about rules related to commercial vehicles, including the requirements of a fee and permit program, using the methods set forth in § 1.7 of this chapter.

* * * * *

Andrea Travnicek,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019–12999 Filed 6–20–19; 8:45 am]

BILLING CODE 4312–52–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WP Docket Nos. 15–32, 16–261, RM–11572, RM–11719, RM–11722, FCC 18–143]

Creation of Interstitial 12.5 Kilohertz Channels in the 800 MHz Band Between 809–817/854–862 MHz; Improve Access to PLMR Spectrum; Land Mobile Communications Council

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of compliance date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved the information collections associated with the rules for central station alarm channels and 800 MHz interstitial channels contained in the Commission's Report and Order and Order FCC 18–143, and that compliance with the modified rules is now required. It removes paragraphs advising that compliance was not required until OMB approval was obtained. This document is consistent with Report and Order and Order FCC 18–143, which states the Commission will publish a document in the **Federal Register** announcing a compliance date for the modified rule sections and revise the rules accordingly.

DATES:

Effective date: This rule is effective June 21, 2019.

Compliance date: Compliance with 47 CFR 90.175(b) and (e) and 90.621(d)(4), published at 83 FR 61072 on November 27, 2018, is required as of June 21, 2019.

FOR FURTHER INFORMATION CONTACT:

Public Safety licensee information: Brian Marenco, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418–0838, or email: *brian.marenco@fcc.gov.*

Industrial/Business licensee information: Melvin Spann, Mobility Division, Wireless Telecommunications Bureau, (202) 418–1333, *melvin.spann@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, OMB approved the information collection requirement in § 90.175(e) on December 3, 2018, and approved the information collection requirements in §§ 90.175(b) and 90.621(d)(4) on April 15, 2019. Each of these rules was modified in Report and Order and Order FCC 18–143, published at 83 FR 61072, November 27, 2018. The OMB Control Number for the information collection requirement in § 90.175(b) is 3060–0984. The OMB Control Number for the information collection requirement in § 90.175(e) is 3060–0798. The OMB Control Number for the information collection requirement in § 90.621(d)(4) is 3060–1261. The Commission publishes this document as an announcement of the compliance date of the rules. The other rule amendments adopted in the Report and Order and Order, which did not require OMB approval, became effective on December 27, 2018.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW, Washington, DC 20554, regarding OMB Control Numbers 3060–0798 and 3060–0984; and contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554, regarding OMB Control Number 3060–1261. Please include the applicable OMB Control Number in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This document also removes §§ 90.175(k) and 90.621(d)(5) of the Commission's rules, which advised that compliance was not required until OMB approval was obtained.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on December 3, 2018, for the information collection requirement contained in the modification to § 90.175(e), and it received final OMB approval on April 15, 2019 for the information collection requirements contained in the modifications to §§ 90.175(b) and 90.621(d)(4).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number for the information collection requirement in § 90.175(b) is 3060–0984. The OMB Control Number for the information collection requirement in § 90.175(e) is 3060–0798. The OMB Control Number for the information collection requirement in § 90.621(d)(4) is 3060–1261.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0798.

OMB Approval Date: December 3, 2018.

OMB Expiration Date: October 31, 2020.

Title: FCC Application for Radio Service Authorization Wireless Telecommunications Bureau; Public Safety and Homeland Security Bureau.

Form Number: FCC Form 601.

Respondents: Individuals and households; Business or other for profit entities; Not for profit institutions; and State, local or tribal governments.

Number of Respondents and Responses: 255,352 respondents; 255,352 responses.

Estimated Time per Response: .50–1.25 hours.

Frequency of Response: On-occasion or periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535 and 554.

Total Annual Burden: 223,833 hours.

Total Annual Cost: $ 71,877,750.

Nature and Extent of Confidentiality: Respondents may request that materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the FCC rules.

Privacy Act: Yes.

Needs and Uses: On October 22, 2018, the Commission released a Report and Order and Order in WP Docket No. 15–32, RM–11572, WP Docket No. 16–261, RM–11719 and RM–11722, which revises the text to § 90.175(e) of the Commission's rules. The updated rule section requires applicants seeking to license newly available 12.5 kHz bandwidth interstitial channels in the 809–817 MHz/854–862 MHz segment of the 800 MHz band (800 MHz Mid-Band) to include a showing of frequency coordination with their application for license. Applicants include a showing of frequency coordination by completing Schedule H of FCC Form 601. Applicants indicate on Schedule H whether their application was successfully coordinated before it was filed with the Commission and, if so, which Commission-approved frequency coordinator performed the coordination. The Commission now has approval under OMB Control Number 3060–0798 to collect frequency coordination information from applicants seeking to license the newly available 12.5 kHz bandwidth interstitial channels in the 800 MHz Mid-Band.

OMB Control Number: 3060–0984.

OMB Approval Date: April 15, 2019.

OMB Expiration Date: April 30, 2022.

Title: 90.175(b)(1), Frequency Coordinator Requirements, Industrial/Business Pool frequencies.

Form Number: N/A.

Respondents: Business or other for-profit entities, and State, local, or tribal government.

Number of Respondents and Responses: 2,700 respondents; 2,700 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: One-time reporting requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 301, 302(a), 303(g), 303(r), 309, 332(c)(7), 336 and 337.

Total Annual Burden: 2,700 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act: No impact(s).

Needs and Uses: On October 22, 2018, the Commission issued a Report and Order and Order, FCC 18–143, in WP Docket No. 15–32, RM–11572, WP Docket No. 16–261, RM–11719 and RM–11722 (800/PLMR Access Order), in which it revised certain rules to require applicants for channels currently designated for central station alarm use to obtain the concurrence of the central station alarm frequency coordinator in order to use the channels for uses other than central station alarm operations. This requirement is similar to existing requirements pertaining to certain other channels. The Report and Order and Order did not revise any of the information collection requirements that are contained in this collection but rather added additional frequencies to the list. Therefore, this essentially is adding an additional 200 respondents to this collection.

OMB Control Number: 3060–1261.

OMB Approval Date: April 15, 2019.

OMB Expiration Date: April 30, 2022.

Title: Creation of Interstitial 12.5 Kilohertz Channels in the 800 MHz Band Between 809–817/854–862 MHz.

Form Number: N/A.

Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 700 respondents, 350 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection is contained in 47 U.S.C. 151, 154, 301, 303, and 332 of the Communications Act of 1934.

Total Annual Burden: 700 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: There is no need for applicants filing applications to license channels in the 809–817/854–862 MHz band segment (800 MHz Mid-Band) to include confidential information with their application. Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, ''Wireless Services Licensing Records,'' and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

Privacy Act: No impact(s).

Needs and Uses: On October 22, 2018, the Commission released a Report and Order and Order in WP Docket No. 15–32, RM–11572, WP Docket No. 16–261, RM–11719 and RM–11722WP Docket No. 15–32 which adds new rule § 90.621(d)(4) to the Commission's rules. The new rule section requires applicants seeking to license newly available 12.5 kHz bandwidth interstitial channels in the 809–817 MHz/854–862 MHz segment of the 800 MHz band (800 MHz Mid-Band) to include a letter of concurrence from an incumbent licensee if the applicant files an application which causes contour overlap under a forward analysis or receives contour overlap under a reciprocal analysis when the applicant seeks to license channels in the 800 MHz Mid-Band. In the case of the forward analysis, the incumbent licensee must agree in its concurrence letter to accept any interference that occurs as a result of the contour overlap. In the case of the reciprocal analysis, the incumbent licensee must state in its concurrence letter that it does not object to the applicant receiving contour overlap from the incumbent's facility. The purpose of requiring applicants to obtain letters of concurrence if their application causes contour overlap under a forward analysis or receives contour overlap under a reciprocal analysis is to ensure incumbents in the 800 MHz Mid-Band are aware of the contour overlap before an application is granted.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Civil defense, Common carriers, Communications equipment, Emergency medical services, Individuals with disabilities, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows.

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

§ 90.175 [Amended]

■ 2. Amend § 90.175 by removing paragraph (k).

§ 90.621 [Amended]

■ 3. Amend § 90.621 by removing paragraph (d)(5).

[FR Doc. 2019–12984 Filed 6–20–19; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 6106

[CBCA Case 2019–61–01; Docket No. GSA–GSABCA–2019–0005; Sequence No. 1]

RIN 3090–AK07

Civilian Board of Contract Appeals; Rules of Procedure of the Civilian Board of Contract Appeals

AGENCY: Civilian Board of Contract Appeals; General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The Civilian Board of Contract Appeals (Board) amends its rules of procedure to include arbitration of disputes between applicants for public assistance grants and the Federal Emergency Management Agency (FEMA) regarding disasters after January 1, 2016. The Board is promulgating a final regulation after considering the one set of comments received on the proposed rules.

DATE: Effective July 22, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. James Johnson, Co-Chief Counsel, Civilian Board of Contract Appeals, 1800 M Street NW, Suite 600, Washington, DC 20036; at 202–606–8788; or email at *jamesa.johnson@cbca.gov,* for clarification of content. For information on status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite CBCA Case 2019–61–01.

SUPPLEMENTARY INFORMATION:

A. Background

The Board was established within GSA by section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163. Board members are administrative judges appointed by the Administrator of General Services under 41 U.S.C. 7105(b)(2). The FAA Reauthorization Act of 2018, Public Law 115–254, amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5189a(d), to authorize the Board to arbitrate certain disputes between FEMA and applicants for public assistance disaster grants.

The Board published in the **Federal Register** at 84 FR 7861, March 5, 2019, proposed rules of procedure for such arbitration. The notice invited comments on the proposed rules and announced the Board's intention to promulgate final rules after reviewing and considering comments.

The comment period closed on May 6, 2019. The Board received one set of comments. The Board has considered those comments and revised the proposed rules as explained in part B below. The Board now promulgates final rules of procedure. These rules facilitate the efficient assembly of a record that will allow each arbitration panel to issue a just and reasoned decision resolving the dispute before it at the speedy pace that parties expect in arbitration.

B. Comments and Changes

FEMA was the only commenter. FEMA suggested specific changes to five proposed rules (Rules 603, 604, 606, 608, and 612). The Board addresses the comments as follows.

Comment: In proposed Rule 603, FEMA suggested replacing the words ''final agency action'' with ''final agency determination'' and adding the words ''on an applicant's eligibility for public assistance'' to the end of the rule after the word ''decision.''

Response: The Board does not adopt these suggestions. ''Agency action'' is a term of art for an administrative decision that is reviewable in court under the Administrative Procedure Act, 5 U.S.C. 702. The statement in Rule 603 that covered disputes ''come to the Board prior to final agency action'' is correct regardless of the terminology that FEMA may use for such actions. Adding words to the end of the rule also would not enhance clarity, as the first sentence already specifies ''public assistance eligibility and repayment disputes'' as the subject matter of arbitration.

Comment: In proposed Rule 604, FEMA suggested incorporating ''nearly all of the content of 44 CFR 206.209(e)–(m),'' FEMA's regulation for arbitration of public assistance disputes involving Hurricanes Katrina and Rita, excluding paragraphs (e)(2) and (h)(3) of the FEMA regulation. FEMA identified no substantive conflicts (as distinct from wording differences) between proposed Rule 604 and FEMA's Katrina/Rita arbitration regulation. FEMA noted that the proposed rules omit ''a time to file an arbitration request.''

Response: The proposed rules are already substantially consistent with FEMA's regulation, which states, ''The arbitration will be conducted pursuant to procedure established by the arbitration panel.'' 44 CFR 206.209(c). As the designated arbitrator under 42 U.S.C. 5189a(d) of certain disputes regarding disasters after January 1, 2016, the Board is now adopting uniform panel procedures.

The omission of a time to file an arbitration request is intentional. The amended Stafford Act states that to request arbitration, an applicant for relief ''shall submit the dispute to the arbitration process established'' by FEMA for Katrina and Rita disputes. 42 U.S.C. 5189a(d)(5). The Board interprets the statutory term ''process'' to mean the steps established by FEMA for submitting a dispute to arbitration, including the timing and content of an arbitration request. The proposed rule thus defers to FEMA's current and future published guidance on those processing matters. After submittal, consistent with ''the arbitration process'' to which the Act refers, ''[t]he arbitration will be conducted pursuant to procedure established by the arbitration panel.'' 44 CFR 206.209(c). The Act does not direct the Board to use arbitration *procedures* directly from FEMA's Katrina/Rita regulation.

The Board has carefully and independently considered the content of 44 CFR 206.209 in response to FEMA's comment. The Board agrees that its procedural rules should address the timing of a response by FEMA to an arbitration request, and ex parte contacts. The Board adds sentences to Rules 608 and 609 that track the substance of 44 CFR 206.209(e)(4) and (j). The Board also adds language to Rule 606 to clarify that the parties do not pay the Board for arbitration services.

Comment: To proposed Rule 606, FEMA proposed adding, ''For each request, a decision under Rule 613 will be issued by the panel.''

Response: The Board agrees that this sentence clarifies its intent, and includes it, slightly altered, in Rule 606.

Comment: In proposed Rule 608, FEMA objected to the statement that a panel will receive a response to new evidence ''to the extent practicable.'' FEMA argued that it should ''always'' be entitled to file a response.

Response: The language at issue is important because the Stafford Act directs arbitrators to ''consider from the applicant'' (not from FEMA) supporting evidence submitted ''at any time during arbitration.'' 42 U.S.C. 5189a(d)(2). Panels cannot necessarily obtain responses to all new evidence, up to and including the last day of arbitration. That is why the last sentence of Rule 608 warns that a panel may discount the ''significance, weight, or probative value'' of delayed or surprise evidence. As noted above, the final rule sets a time for FEMA's response to an arbitration request. The Board retains the limiting phrase ''to the extent practicable'' in Rule 608 for responses to later-offered evidence. Panels will decide practicability case by case.

Comment: In Rule 612, FEMA suggested deleting the first sentence, regarding statutory intent.

Response: The Board agrees and removes this sentence from Rule 612, adding the words ''of streamlining'' to the second sentence for clarity.

The final regulation includes changes discussed above as well as minor, non-substantive corrections of the proposed rules. The corrections are as follows.

In Rule 604, a citation to 44 CFR 206.209(e) is deleted from the first sentence, and the second sentence is deleted, as unnecessary. In Rule 605, the second ''by'' is deleted from the third sentence as unnecessary. In the sixth sentence of Rule 608, ''before the close of arbitration'' is shortened to ''before arbitration closes.'' In the fourth sentence of Rule 610, a comma is deleted and the word ''involuntary'' is inserted before ''prehearing'' for clarity. In the seventh and eighth sentences of Rule 611, the word ''to'' is inserted in ''or [to] make,'' and ''made'' is inserted before ''subject to.''

C. Regulatory Flexibility Act

GSA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 602 *et seq.,* and the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, because the final rule does not impose any additional costs on small or large businesses.

D. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because this final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget.

E. Congressional Review Act

The final rule is exempt from Congressional review under Public Law 104–121 because it relates solely to agency organization, procedure, and practice and does not substantially affect the rights or obligations of non-agency parties.

F. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993, or E.O. 13563, Improving Regulation and Regulatory Review, dated January 18, 2011. This final rule is not a major rule under 5 U.S.C. 804.

G. Executive Order 13771

This final rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

List of Subjects in 48 CFR Part 6106

Administrative practice and procedure; Disaster relief.

Dated: June 14, 2019.

Jeri Kaylene Somers,

Chair, Civilian Board of Contract Appeals, General Services Administration.

■ Therefore, GSA adds 48 CFR part 6106 to read as follows:

PART 6106—RULES OF PROCEDURE FOR ARBITRATION OF PUBLIC ASSISTANCE ELIGIBILITY OR REPAYMENT

Sec.

6106.613 Decision; finality [Rule 613].

Authority: 42 U.S.C. 5189a(d).

6106.601 Scope [Rule 601].

The rules in this part establish procedures for arbitration by the Board at the request of an applicant for public assistance from the Federal Emergency Management Agency (FEMA) for a disaster that occurred after January 1, 2016.

6106.602 Authority [Rule 602].

The Board is authorized by section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5189a(d), to arbitrate disputes between applicants and FEMA as to eligibility for public assistance (or repayment of past public assistance) for a disaster post-dating January 1, 2016, when the disputed amount exceeds $500,000 or, for an applicant in a rural area, is at least $100,000.

6106.603 Purpose [Rule 603].

Under the Stafford Act, the Board acts for the United States Government to resolve public assistance eligibility and repayment disputes by arbitration, a speedy and flexible method of impartial dispute resolution. Eligibility and repayment disputes come to the Board prior to final agency action by FEMA. An arbitration decision under these rules is the final action by the Executive Branch in a dispute. These rules facilitate the creation of an arbitration record sufficient to allow the Board to issue a prompt, just, and reasoned decision.

6106.604 Arbitration request [Rule 604].

(a) An applicant for public assistance may request arbitration by following applicable FEMA guidance implementing section 423 of the Stafford Act.

(b) Applicants shall efile arbitration requests with the Board as prescribed by Board Rule 1 (48 CFR 6101.1). Voluminous attachments may be filed separately in electronic media as if under Board Rule 4(b)(1) and (3) (48 CFR 6101.4(b)(1) and (3)). The Clerk of the Board will acknowledge an arbitration request by emailing the parties a docketing notice.

6106.605 Parties; representation; email service [Rule 605].

The parties to an arbitration are the applicant, the grantee (if not the applicant), and FEMA. Each party shall have one primary representative. This person need not be an attorney but must be authorized by law, formal delegation, or permission of the arbitrators to speak and act for the party in the arbitration. Unless otherwise advised, the Board deems the person who signed the arbitration request to be the applicant's primary representative. Any other primary representative or other party representative shall promptly efile a notice of appearance complying with Board Rule 5(b) (48 CFR 6101.5(b)). Unless otherwise directed by the panel, a party shall email its efilings to every other party's primary representative at the time of filing.

6106.606 Arbitrators; panels; costs [Rule 606].

The Board assigns three judges as the panel of arbitrators for each request. A single arbitrator may act on behalf of a panel under Rules 607 and 611. A full panel issues any decision under Rule 613. The Board arbitrates at no cost to the parties, who bear their own costs of participation.

6106.607 Initial conference [Rule 607].

The panel will hold a telephonic scheduling conference with all parties as soon as practicable, ordinarily within 14 calendar days after the Clerk dockets an arbitration request. Each primary party representative shall participate in the conference. At least one panel member will preside. The panel will promptly issue to the parties a written summary of the conference and the schedule. A party has 5 calendar days from receipt of the panel's conference summary to efile any objection to it. The panel may hold and summarize other conferences as necessary.

6106.608 Evidence; timing [Rule 608].

No party is required to provide additional evidence. An applicant or grantee may, but need not, supplement materials it previously provided to FEMA regarding the dispute. A party may elect to present additional evidence, *i.e.,* documents, things, or testimony tending to make a factual contention appear more or less likely to be true. If a party so elects, the panel will to the extent practicable allow a response. FEMA shall efile its response to an arbitration request within 30 calendar days after receiving the docketing notice. A panel may not exclude as untimely evidence proffered before arbitration closes under Rule 613. A panel may consider the timing or surprise nature of evidence when assessing the significance, credibility, or probative value of the evidence.

6106.609 Other materials considered; ex parte communications [Rule 609].

Written or oral arguments or statements of experts as to how a panel should understand evidence or apply the law are not evidence but may be presented as scheduled by the panel and may be subject to page, word, or time limits. By the close of arbitration under Rule 613, parties should provide the panel with everything it needs to make a decision. Documents written by a party for the panel during arbitration shall comply with Board Rules 1(b) (''Efiles; efiling''), 7, and 23 (48 CFR 6101.1(b), 6101.7, and 6101.23). No member of a panel or of the Board's staff will communicate with a party about any material issue in arbitration outside of the presence of the other party or parties, and no one shall attempt such communications on behalf of a party.

6106.610 Motions [Rule 610].

Motions are strictly limited and should ordinarily be made orally during the initial conference under Rule 607. A later motion may be efiled. A party may make a procedural motion, such as to extend time. An applicant may move for voluntary dismissal. No party may move for a prehearing merits decision (*e.g.,* summary judgment or dismissal for failure to state a claim) or for involuntary prehearing dismissal other than on the merits except on the grounds that an arbitration request is untimely. A panel ordinarily issues one decision per arbitration.

6106.611 Hearing; live or paper [Rule 611].

Parties may conclude arbitration by presenting their positions in a hearing. A hearing may be live or, if agreed by all parties, on a written record (a ''paper hearing'') or a combination of the two. The panel will begin a hearing within 60 calendar days after the initial conference under Rule 607 unless the Board Chair approves a later date. All panel members will attend a live hearing in Washington, DC. A single panel member may conduct a live hearing elsewhere. Hearing procedures are at the panel's discretion, with the goal of promptly, justly, and finally resolving the dispute, and need not involve traditional witness examination or cross-examination. Parties should not offer fact witnesses to read legal materials or to make legal arguments. Statements of fact in a hearing need not be sworn but are made subject to penalty for violation of 18 U.S.C. 1001. Live hearings are not public and may not be recorded by any means without the Board's permission. The Board may have a live hearing transcribed for the panel's use. If a transcript is made, a party may purchase a copy and has 7 calendar days after a copy is available to efile proposed corrections.

6106.612 Streamlined procedures [Rule 612].

The Board encourages parties to focus on providing only the information a panel needs to resolve an eligibility or repayment dispute. Examples of streamlining may include without limitation—

(a) Electing not to supplement the materials already provided to FEMA, if (or to the extent) the existing record adequately frames the dispute;

(b) Relying when possible on documents over other types of evidence;

(c) Simplifying live hearings by efiling in advance written testimony, reports, or opening statements by some witnesses or party representatives;

(d) Refraining from objecting to evidence without good cause; and

(e) Omitting duplicative and immaterial evidence and arguments.

6106.613 Decision; finality [Rule 613].

The panel will advise the parties when the arbitration is closed. The panel will resolve a dispute within 60 calendar days thereafter unless the panel advises the parties that the Board Chair approves a later date. The panel's decision may be issued in writing or orally with transcription. A decision is primarily for the parties, is not precedential, and should concisely resolve the dispute. The decision of a panel majority is the final administrative action on the arbitrated dispute and is judicially reviewable only to the limited extent provided by the Federal Arbitration Act (9 U.S.C. 10). Within 30 calendar days after issuing a decision, a panel may correct clerical, typographical, technical, or arithmetic errors. A panel may not reconsider the merits of its decision resolving an eligibility or repayment dispute.

[FR Doc. 2019–13081 Filed 6–20–19; 8:45 am]

BILLING CODE 6820–AL–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120627194–3657–02]

RIN 0648–XT002

Atlantic Highly Migratory Species; North Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS is adjusting the Swordfish General Commercial permit retention limits for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for July through December of the 2019 fishing year, unless otherwise later noticed. The Swordfish General Commercial permit retention limits in each of these regions are increased from the regulatory default limits (either two or three fish) to six swordfish per vessel per trip. The Swordfish General Commercial permit retention limit in the Florida Swordfish Management Area will remain unchanged at the default limit of zero swordfish per vessel per trip, as discussed in more detail below. These adjustments apply to Swordfish General Commercial permitted vessels and to Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial endorsement when on a non-for-hire trip. This action is based upon consideration of the applicable inseason regional retention limit adjustment criteria.

DATES: The adjusted Swordfish General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions are effective from July 1, 2019, through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Rick Pearson or Randy Blankinship, 727–824–5399.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of North Atlantic swordfish by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. North Atlantic swordfish quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and implemented by the United States into two equal semi-annual directed fishery quotas; an annual incidental catch quota for fishermen targeting other species or catching swordfish recreationally, and a reserve category, according to the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated Atlantic HMS FMP) (71 FR 58058, October 2, 2006), as amended, and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

In 2017, ICCAT Recommendation 17–02 specified that the overall North Atlantic swordfish total allowable catch (TAC) be set at 9,925 metric tons (mt) dressed weight (dw) (13,200 mt whole weight (ww)) through 2021. Consistent with scientific advice, this was a reduction of 500 mt ww (375.9 mt dw) from previous ICCAT-recommended TACs. However, the United States' baseline quota remained at 2,937.6 mt dw (3,907 mt ww) per year. The Recommendation (17–02) also continued to limit underharvest carryover to 15 percent of a contracting party's baseline quota. Thus, the United States may carry over a maximum of 440.6 mt dw (586.0 mt ww) of underharvest. Absent adjustments, the codified baseline quota is 2,937.6 mt dw for 2019. At this time, given the extent of underharvest in 2018, NMFS anticipates carrying over the maximum allowable 15 percent (440.6 mt dw), which would result in a final adjusted North Atlantic swordfish quota for the 2019 fishing year equal to 3,378.2 mt dw (2,937.6 + 440.6 = 3,378.2 mt dw). As in past years we anticipate allocating 50 mt dw from the adjusted quota to the Reserve category for inseason adjustments/research and allocating 300 mt dw to the Incidental category, which includes recreational landings and landings by incidental swordfish permit holders, consistent with § 635.27(c)(1)(i)(D) and (B). This would result in an adjusted quota of 3,028.2 mt dw for the directed fishery, which would be split equally (1,514.1 mt dw) between the two semi-annual periods in 2019 (January through June, and July through December).

Adjustment of Swordfish General Commercial Permit Vessel Retention Limits

The 2019 North Atlantic swordfish fishing year, which is managed on a calendar-year basis and divided into two equal semi-annual quotas for the directed fishery, began on January 1, 2019. Landings attributable to the Swordfish General Commercial permit count against the applicable semi-annual directed fishery quota. Regional default retention limits for this permit have been established and are automatically effective from January 1 through December 31 each year, unless changed based on the inseason regional retention limit adjustment criteria at § 635.24(b)(4)(iv). The default retention limits established for the Swordfish General Commercial permit are: (1) Northwest Atlantic region—three swordfish per vessel per trip; (2) Gulf of

Mexico region—three swordfish per vessel per trip; (3) U.S. Caribbean region—two swordfish per vessel per trip; and, (4) Florida Swordfish Management Area—zero swordfish per vessel per trip. The default retention limits apply to Swordfish General Commercial permitted vessels and to HMS Charter/Headboat permitted vessels with a commercial endorsement when fishing on non-for-hire trips. As a condition of these permits, vessels may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

Under § 635.24(b)(4)(iii), NMFS may increase or decrease the Swordfish General Commercial permit vessel retention limit in any region within a range from zero to a maximum of six swordfish per vessel per trip. Any adjustments to the retention limits must be based upon a consideration of the relevant criteria provided in § 635.24(b)(4)(iv), which include: (A) The usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock; (B) the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year; (C) the estimated amounts by which quotas for other categories of the fishery might be exceeded; (D) effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments; (E) variations in seasonal distribution, abundance, or migration patterns of swordfish; (F) effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and, (G) review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

NMFS has considered these criteria as discussed below and their applicability to the Swordfish General Commercial permit retention limit in all regions for July through December of the 2019 North Atlantic swordfish fishing year. We have determined that the Swordfish General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions applicable to persons issued a Swordfish General Commercial permit or HMS Charter/Headboat permit with a commercial endorsement (when on a non-for-hire trip) should be increased from the default levels that would otherwise automatically become effective on July 1, 2019, to six swordfish per vessel per trip from July 1 through December 31, 2019, unless otherwise later noticed. These are the same limits that were implemented through an inseason adjustment for the period January 1 through June 31, 2019 (83 FR 65571, December 21, 2018). Given the rebuilt status of the stock and the availability of quota, increasing the Swordfish General Commercial permit retention limits in three regions to six fish per vessel per trip will increase the likelihood that directed swordfish landings will approach, but not exceed, the available annual swordfish quota, and increase the opportunity for catching swordfish during the 2019 fishing year.

In 2018, a six swordfish per vessel trip limit was in effect for Swordfish General Commercial permit holders in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for the entire fishing season. As of December 31, 2018, total annual directed swordfish landings were approximately 901.0 mt dw, or 29.8 percent of the 3,028.2 mt dw annual adjusted directed quota for 2018, which includes landings under the six fish trip limit.

Among the regulatory criteria for inseason adjustments to retention limits, and given the rebuilt status of the stock and availability of quota, is the requirement that NMFS consider the ‘‘effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments.’’ See § 635.24(b)(4)(iv)(D). A consideration in deciding whether to increase the retention limit, in this case, is the objective of providing opportunities to harvest the full North Atlantic directed swordfish quota without exceeding it based upon the 2006 Consolidated Atlantic HMS FMP goal to, consistent with other objectives of this FMP, ‘‘manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.’’ This action will help preserve a traditional swordfish handgear fishery (rod and reel, handline, harpoon, bandit gear, and green-stick). Although this action does not specifically provide recreational fishing opportunities, it will have a minimal impact on the recreational sector because recreational landings are counted against a separate incidental swordfish quota.

NMFS has examined dealer reports and landing trends and determined that the information obtained from biological sampling and monitoring of the North Atlantic swordfish stock is useful. See § 635.24(b)(4)(iv)(A). Regarding the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year, § 635.24(b)(4)(iv)(B), NMFS reviewed electronic dealer landings data, which indicates that sufficient directed swordfish quota will be available for the July through December 2019 semi-annual quota period if recent swordfish landing trends continue. The directed swordfish quota has not been harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded in 2019. As of April 30, 2019, approximately 8.5 percent (258.9 mt ww) of the anticipated 3,028.2 mt dw annual adjusted directed swordfish quota for 2019 had been harvested during the first semi-annual quota period. Based upon recent landings rates from dealer reports, an increase in the vessel retention limits to six fish for Swordfish General Commercial permit holders and Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) in three regions is not likely to cause quotas for other categories of the fishery to be exceeded. See § 635.24(b)(4)(iv)(C). Similarly, regarding the criteria about the effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota, § 635.24(b)(4)(iv)(F), we expect there to be sufficient swordfish quota for the entirety of the 2019 fishing year. Thus, increased catch rates in these three regions as a result of this action would not be expected to preclude vessels in the other region (*e.g.,* the buoy gear fishery in the Florida Swordfish Management Area) from having a reasonable opportunity to harvest a portion of the overall swordfish quota.

In making adjustments to the retention limits NMFS must also consider variations in seasonal distribution, abundance, or migration patterns of swordfish, and the availability of swordfish on the fishing grounds. See § 635.24(b)(4)(iv)(G). With regard to swordfish abundance, the 2018 report by ICCAT's Standing Committee on Research and Statistics indicated that the North Atlantic swordfish stock is not overfished (B_{2015}/B_{msy} = 1.04), and overfishing is not occurring (F_{2015}/F_{msy} = 0.78). Increasing retention limits for the General Commercial directed fishery is not expected to affect the swordfish stock status determination because any additional landings would be within the ICCAT-recommended U.S. North Atlantic swordfish quota allocation, which is consistent with conservation and management measures to prevent overfishing on the stock. Increasing opportunities by increasing retention limits from the default levels beginning on July 1, 2019, is also important because of the migratory nature and seasonal distribution of swordfish. In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for swordfish may be constrained by the short amount of time that the swordfish are present in the area as they migrate.

Finally, another consideration, consistent with the FMP and its amendments, is to continue to provide protection to important swordfish nursery areas and migratory corridors. Therefore, NMFS has determined that the retention limit for the Swordfish General Commercial permit will remain at zero swordfish per vessel per trip in the Florida Swordfish Management Area at this time. As discussed above, NMFS considered consistency with the 2006 HMS FMP and its amendments, and the importance for NMFS to continue to provide protection to important swordfish nursery areas and migratory corridors. As described in Amendment 8 to the 2006 Consolidated Atlantic HMS FMP (78 FR 52011, August 21, 2013), the area off the southeastern coast of Florida, particularly the Florida Straits, contains oceanographic features that make the area biologically unique. It provides important juvenile swordfish habitat, and is essentially a narrow migratory corridor containing high concentrations of swordfish located in close proximity to high concentrations of people who may fish for them. Public comment on Amendment 8, including from the Florida Fish and Wildlife Conservation Commission, indicated concern about the resultant high potential for the improper rapid growth of a commercial fishery, increased catches of undersized swordfish, the potential for larger numbers of fishermen in the area, and the potential for crowding of fishermen, which could lead to gear and user conflicts. These concerns remain valid. NMFS will continue to collect information to evaluate the appropriateness of the retention limit in the Florida Swordfish Management Area and other regional retention limits. This action therefore maintains a zero-fish retention limit in the Florida Swordfish Management Area.

The directed swordfish quota has not been harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded during 2019. This information indicates that sufficient directed swordfish quota should be available from July 1 through December 31, 2019, at the higher retention levels, within the limits of the scientifically-supported TAC and consistent with the goals of the 2006 Consolidated Atlantic HMS FMP as amended, ATCA, and the Magnuson-Stevens Act, and are not expected to negatively impact stock health.

Monitoring and Reporting

NMFS will continue to monitor the swordfish fishery closely during 2019 through mandatory landings and catch reports. Dealers are required to submit landing reports and negative reports (if no swordfish were purchased) on a weekly basis.

Depending upon the level of fishing effort and catch rates of swordfish, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure that the available quota is not exceeded or to enhance fishing opportunities. Subsequent actions, if any, will be published in the **Federal Register**. In addition, fishermen may access *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/2019-atlantic-swordfish-landings-updates* for updates on quota monitoring.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated Atlantic HMS FMP, as amended, provide for inseason retention limit adjustments to respond to changes in swordfish landings, the availability of swordfish on the fishing grounds, the migratory nature of this species, and regional variations in the fishery. Based on available swordfish quota, stock abundance, fishery performance in recent years, and the availability of swordfish on the fishing grounds, among other considerations, adjustment to the Swordfish General Commercial permit retention limits from the default levels of two or three fish to six swordfish per vessel per trip as discussed above is warranted, while maintaining the default limit of zero-fish retention in the Florida Swordfish Management Area. Analysis of available data shows that adjustment to the swordfish retention limit from the default levels would result in minimal risk of exceeding the ICCAT-allocated quota.

NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the ''News and Announcements'' website at *https://www.fisheries.noaa.gov/news-and-announcements* (filter by ''Atlantic Highly Migratory Species'' under ''Topic''). Delays in temporarily increasing these retention limits caused by the time required to publish a proposed rule and accept public comment would adversely and unnecessarily affect those Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) that would otherwise have an opportunity to harvest more than the otherwise applicable lower default retention limits of three swordfish per vessel per trip in the Northwest Atlantic and Gulf of Mexico regions, and two swordfish per vessel per trip in the U.S. Caribbean region. Limiting opportunities to harvest available directed swordfish quota may have negative social and economic impacts for U.S. fishermen. Adjustment of the retention limits needs to be effective on July 1, 2019, to allow Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) to benefit from the adjustment during the relevant time period, which could pass by for some fishermen who have access to the fishery during a short time period because of seasonal fish migration, if the action is delayed for notice and public comment. Furthermore, the public was given an opportunity to comment on the underlying rulemakings, including the adoption of the North Atlantic swordfish U.S. quota, and the retention limit adjustments in this action would not have any additional effects or impacts since the retention limit does not affect the overall quota. Thus, there would be little opportunity for meaningful input and review with public comment on this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.24(b)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 18, 2019.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–13222 Filed 6–20–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]

RIN 0648–XH066

Fisheries of the Exclusive Economic Zone Off Alaska; Kamchatka Flounder in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Kamchatka flounder in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2019 Kamchatka flounder initial total allowable catch (ITAC) in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), June 18, 2019, through 2400 hours, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2019 Kamchatka flounder ITAC in the BSAI is 4,250 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2019 Kamchatka flounder ITAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,000 mt, and is setting aside the remaining 2,250 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Kamchatka flounder in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Kamchatka flounder to directed fishing in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 14, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 17, 2019.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–13192 Filed 6–18–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 120

Friday, June 21, 2019

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 134

RIN 3245–AH05

Implementation of the Small Business 7(a) Lending Oversight Reform Act of 2018

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: On June 21, 2018, Congress enacted the Small Business 7(a) Lending Oversight Reform Act of 2018, (''Act''). The purpose of the legislation was to increase the Small Business Administration's (''SBA'' or ''Agency'') oversight capabilities and to ensure the integrity of the 7(a) Loan Program. The Act contains several new and strengthened authorities. Section 3 of the Act requires SBA to promulgate regulations to implement certain of the Act's provisions. SBA is proposing this rule to implement the Act and to update the Agency's regulations on supervision of all lenders participating in SBA's business loan programs.

DATES: SBA must receive comments to the proposed rule on or before August 20, 2019.

ADDRESSES: You may submit comments, identified by RIN: 3245–AH05, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Bethany Shana, Office of Credit Risk Management, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416.
- *Hand Delivery/Courier:* Bethany Shana, Office of Credit Risk Management, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *https://www.regulations.gov.* If you wish to submit confidential business information (''CBI''), as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Office of Credit Risk Management, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416. You are requested to highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Bethany Shana, Office of Credit Risk Management, Office of Capital Access, Small Business Administration, 409 3rd Street SW, Washington, DC 20416; telephone: (202) 205–6402; email: *Bethany.Shana@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and History

SBA is authorized under Sections 7(a) and 7(m) of the Small Business Act and Title V of the Small Business Investment Act of 1958 to conduct small business loan programs. 15 U.S.C. 636(a) and (m) and 695 *et seq.* SBA's business loan programs provide critical access to credit for America's small businesses, bridging the lending gap that exists in the market for our nation's smallest companies. Along with the authority to offer government guarantees, Congress provided SBA the authority to supervise lenders participating in these programs. 15 U.S.C. 634, 636, 650, and 697.

Growth in SBA 7(a) lending prompted Congress to undertake a thorough examination of the tools available at SBA to ensure that comprehensive oversight is accomplished.[1] Following that review, Congress enacted the Small Business 7(a) Lending Oversight Reform Act of 2018, Public Law 115–189 (June 21, 2018) (the ''Act''). The Act strengthened SBA's 7(a) Lender supervision authorities and the office charged with that responsibility, SBA's Office of Credit Risk Management (''OCRM''). The legislation codified SBA's authority to take informal enforcement actions against 7(a) Lenders, which currently includes, for example, supervisory letters, Board of Directors (''Board'') resolutions, and agreements. It also codified SBA's broad authority to take formal enforcement actions against 7(a) Lenders. Those actions currently include, but are not limited to, portfolio guaranty dollar limits, delegated authority suspensions, program suspensions, and program revocations. To further strengthen 7(a) Loan Program supervision, the Act provided authority for SBA to assess civil monetary penalties (''CMPs'') against 7(a) Lenders. The Act also provided several other provisions that support SBA's ability to perform effective 7(a) Loan Program supervision.

SBA's lender oversight regulations are codified in 13 CFR part 120, subpart I (13 CFR 120.1000 through 120.1600). The recent legislation required SBA to promulgate regulations to implement certain provisions in the Act. Accordingly, SBA is publishing this notice of proposed rulemaking to implement the legislation and is also proposing to update its lender oversight regulations. The updates would include technical corrections and clarifications to better inform lenders and to strengthen enforcement. In keeping with the purpose of the Act to increase SBA's oversight capabilities to ensure the integrity of the business loan programs while protecting taxpayer dollars, and because SBA's 7(a) oversight framework is generally interwoven with that of the 504 Loan Program and Microloan Program, SBA is proposing to extend some of the updates to Certified Development Companies (''CDCs'') in the 504 Loan Program and Microloan Intermediaries (''Intermediaries'') in the Microloan Program. A summary of key aspects of the proposed rule and a section-by-section analysis follows.

II. Summary of Key Aspects of the Proposal

The following is a summary of key provisions in the proposed rule. For a more detailed discussion of the proposal and each regulation, see the section-by-section analysis.

A. *Codification of Informal Enforcement Tools (7(a) Lenders).* Public Law 115–189 requires SBA to incorporate into SBA regulations SBA's informal enforcement tools for 7(a) Lenders. Such enforcement tools or actions currently include, for example, supervisory letters and agreements (*e.g.,* voluntary withdrawal agreements and voluntary agreements for immediate suspension of secondary market sales).

[1] H. Rep. No. 115–655 at 6 (2018).

Proposed § 120.1300 would set forth SBA's proposed regulation on informal enforcement actions for 7(a) Lenders. It would identify the key informal enforcement actions that SBA may undertake. While most of the actions listed are not new and are currently in SBA's Standard Operating Procedure (''SOP'') 50 53, Lender Supervision and Enforcement,[2] the proposed rule includes a few changes to the list as further discussed in the section-by-section analysis. Proposed § 120.1300 would also include the circumstances that SBA would consider in choosing to take informal action instead of formal action. The circumstances proposed would be largely the same as those that are currently in SOP 50 53.

B. *Civil Monetary Penalties (7(a) Lenders).* Congress reviewed the types of actions that SBA could take and found that ''missing from OCRM's toolbox is the ability to apply a civil monetary penalty'' against all 7(a) Lenders.[3] Congress, therefore, established in the legislation general authority to impose civil monetary penalties (''CMPs'') against 7(a) Lenders. This authority is in addition to the limited authority that Congress granted SBA in 2004 to assess CMPs against SBA Supervised Lenders for reporting failures.[4] The general authority granted by the new legislation authorizes SBA to assess CMPs against a 7(a) Lender of up to $250,000. Proposed § 120.1500(b)(2) would set forth SBA's general authority to impose CMPs against 7(a) Lenders. Under the proposed regulation, CMPs would be assessed in an amount not to exceed the maximum published in the **Federal Register** from time to time, to allow for annual inflation adjustments as required by section 701 of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 (November 2, 2015).[5] Assessment of CMPs would assist in protecting the integrity of the 7(a) Loan Program.

C. *OHA Appeals (7(a) Lenders).* The new legislation also provided 7(a) Lenders the ability to appeal most enforcement actions to either Federal district court or SBA's Office of Hearings and Appeals (''OHA''). This provision is contained in proposed §§ 120.1300(c) and 120.1600(a)(5). SBA's decision on the informal or formal enforcement action would remain in effect pending resolution of the appeal, which is consistent with the effect of appeals of secondary market suspension or revocation actions under current § 120.660. The proposed rule would also amend affected provisions in 13 CFR 134.102 and 134.205. Any further revision to part 134, if needed, would be contained in a separate rulemaking.

D. *Microloan Intermediary Enforcement (Intermediaries).* Under SBA's Microloan Program, SBA makes direct loans to Intermediaries, the proceeds of which are used to fund loans to small business microloan borrowers. The lending arrangement between SBA and the Intermediary is memorialized in a Loan Authorization and Agreement, Promissory Note, Security Agreement, and related documents. SBA can take action against an Intermediary under the Promissory Note and against SBA's collateral for defaults, including but not limited to, non-compliance with SBA loan program requirements. SBA also makes grants to Intermediaries and can take action against Intermediaries under applicable grant law. In addition, SBA may take formal enforcement action against Intermediaries under § 120.1540. The grounds for formal enforcement action against Intermediaries are set forth in 13 CFR 120.1425. The proposed rule would clarify § 120.1425 by regrouping some of the grounds and specifying other grounds consistent with those applicable to 7(a) Lenders and CDCs (together, ''SBA Lenders''). It would also clarify § 120.1540, which covers types of formal enforcement actions against Intermediaries. In particular, the proposed § 120.1540 update would specify that SBA can undertake immediate suspension against an Intermediary, which may include but is not limited to the authority to make, service, liquidate, and/or litigate SBA microloans and to freeze an Intermediary's Microloan Revolving Fund and Loan Loss Reserve Fund accounts. It would also clarify that program revocations may include portfolio surrender. In addition, the proposed rule would remove a few provisions that are covered elsewhere for Intermediaries.

E. *Credit Elsewhere (SBA Lenders).* Congress in the new legislation sought to update and modernize SBA's ''foundational test'' of eligibility (*i.e.,* that the small business applicant cannot obtain the credit elsewhere on reasonable terms without the government guaranty).[6] Congress, therefore, codified in the legislation a new definition of credit elsewhere, clarifying many of the factors utilized in the definition. The new definition of credit elsewhere realigns the test to ensure it is based on a borrower's ability to obtain credit, rather than a lender's ability to offer credit. The proposed rule would update 13 CFR 120.101 to conform the section to changes in the definition of credit elsewhere contained in the new legislation.

F. *Other Technical Amendments, Updates, and Clarifications (SBA Lenders and Intermediaries).* The proposed rule would contain other technical amendments, updates, and clarifications: for example, the 13 CFR 120.10 definition for ''Federal Financial Institution Regulator'' would be updated to delete reference to the Office of Thrift Supervision as this agency has been abolished and merged into the Office of the Comptroller of the Currency and other Federal banking agencies. 12 U.S.C. 5412 and 5413. The definition for ''Loan Program Requirements'' would be clarified to apply to Intermediaries. In addition, SBA would delete reference to Non-lending Technical Assistance Providers (''NTAPs'') throughout SBA's oversight regulations, as SBA has not issued technical assistance grants to NTAPs in many years and technical assistance grants are currently made to Intermediaries. SBA would also clarify in § 120.1000 that risk-based oversight includes monitoring. In addition, SBA would update and clarify proposed § 120.1400(c)(9) to better inform SBA Lenders that their failure to properly oversee the activity of their respective Agents increases SBA's financial risk. Supervisory concern with lender failure to effectively monitor third-party activities has been increasing as financial institutions rely more heavily on third-party assistance.

III. Section-by-Section Analysis

A. *Section 120.10—Definitions.* Proposed § 120.10 would update the definition of ''Federal Financial Institution Regulator'' to reflect elimination of the Office of Thrift Supervision. SBA would also update the definition of the ''Lender Oversight Committee'' to reference that membership and duties are derived from the Small Business Act, that the committee meets quarterly, and that it votes on formal enforcement action recommendations. In addition, SBA would clarify that the term ''Loan Program Requirements'' may also be referred to as ''SBA Loan Program Requirements'', would include **Federal Register** notices and applicable government-wide regulations in the

[2] Available at *https://www.sba.gov/document/sop-50-53-lender-supervision-and-enforcement.*

[3] H. Rep. No. 115–655 at 14 (2018).

[4] See, 15 U.S.C. 650(j).

[5] CMP maximums for SBA Supervised Lender reporting failures also would be published in the **Federal Register** to allow for the required annual inflation adjustments. See proposed § 120.1500(c)(4).

[6] H. Rep. No. 115–655 at 15 (2018).

definition, and would extend the definition to Intermediaries.

B. *Section 120.101—Credit Not Available Elsewhere.* One of the primary goals of the new legislation is to ensure that the credit elsewhere test is being applied correctly and consistently by lenders and that it is being appropriately verified by SBA.[7] The proposed rule would codify in SBA's credit elsewhere regulation the new definition for credit elsewhere as contained in the legislation. Under § 120.101 as proposed, credit elsewhere would mean that credit is unavailable to the small business applicant on reasonable terms and conditions from non-Federal, non-State, and non-local government sources without SBA assistance, taking into consideration factors associated with conventional lending practices, including: (i) The business industry of the loan applicant; (ii) whether the loan applicant has been in operation 2 years or less; (iii) the adequacy of collateral available to secure the loan; (iv) the loan term necessary to reasonably assure repayment of the loan from business cash flow; and (v) any other factor relating to the particular loan application that cannot be overcome except through obtaining a Federal loan guarantee under prudent lending standards. Examples of ''other factors relating to the particular loan application'' may include, but would not be limited to, management experience, leverage ratio, global cashflow, loan size relative to the age of the business, or the personal resources of the owners of the business, and must be specifically explained and documented with relevant supporting documentation in the lender's credit memorandum. Section 120.101 as revised would continue to apply to all SBA Lenders, including CDCs.

C. *Section 120.180—Compliance with Loan Program Requirements.* Sections 3 and 4 of the Act provide that SBA is to oversee compliance with SBA Loan Program Requirements, including credit elsewhere. SBA is proposing revisions to 13 CFR 120.180 to facilitate this oversight. The revisions would codify in § 120.180 SBA's requirement that SBA Lenders maintain documentation to support that Loan Program Requirements, which would include credit elsewhere (as applicable), have been satisfied. SBA examines these documents during reviews and exams. This documentation would facilitate prudent lending and is a practice that all prudent lenders already undertake. The proposed rule would also clarify that Intermediaries, in addition to 7(a) Lenders and CDCs, are expected to comply with Loan Program Requirements and are covered by this regulation.

D. *Section 120.1000—Risk-Based Lender Oversight; § 120.1010—SBA Access to SBA Lender and Intermediary Files; § 120.1015—Risk Rating System; § 120.1025—Monitoring; § 120.1050—Reviews and Examinations; and § 120.1051—Frequency of Reviews and Exams.* The proposed rule would update these sections to remove references to NTAPs, as SBA has not issued technical assistance grants to NTAPs in many years. Technical assistance in the Microloan Program is being administered directly by Intermediaries.

E. *Section 120.1055—Review and Examination Results.* The Act provides that a 7(a) Lender's response to an exam or review is due no later than 45 business days after receiving the report from SBA. Currently, 13 CFR 120.1055 provides 7(a) Lenders, CDCs, and Intermediaries 30 calendar days to respond. Legislative history indicates that this provision was intended to extend the response timeframe. Proposed § 120.1055 would revise the timeframe from 30 calendar days to 45 calendar days. The revision would extend the time consistent with the statute and would be based on calendar days for ease of calculation. If a lender needs additional time, the lender may request the time and SBA could authorize it, as warranted. The proposed rule would clarify when a lender receives a report for purposes of this regulation (*i.e.,* it is considered received on the date it is emailed to the last known email address for the SBA Lender or Intermediary, unless the SBA Lender or Intermediary can provide compelling evidence that it was received on a different date). Proposed revisions to § 120.1055 would also codify SBA's 90-day timeframe for lenders to implement corrective actions. The proposed rule would include flexibility to allow for a longer or shorter timeframe, as warranted. Codification would provide lenders notice in addition to that contained in the report transmittal letter and would strengthen compliance and consistency. The proposed rule would also clarify that the response must address (in addition to findings and corrective actions) SBA recommendations, if any. In addition, proposed § 120.1055 would be updated to remove reference to NTAPs.

F. *Section 120.1060—Confidentiality of Reports, Risk Ratings and Related Confidential Information.* The proposed rule would update this section to remove references to NTAPs, as SBA has not issued technical assistance grants to NTAPs in many years. Technical assistance in the Microloan Program is being administered directly by Intermediaries.

G. *Section 120.1300—Informal Enforcement Actions—7(a) Lenders.* The proposed rule would create a new section, § 120.1300, to codify SBA's informal enforcement actions for 7(a) Lenders as required by the Act. Proposed new § 120.1300 would include a list of informal enforcement actions. The proposed list would be similar to that currently contained in SOP 50 53, with the addition of mandatory training and the removal of the headquarters meeting. SBA believes mandatory training would be a good addition to its informal tools, one that could assist lenders to efficiently and effectively resolve deficiencies and compliance issues. While SBA has found that a headquarters meeting can be a very effective oversight tool, such meetings are generally conducted during (and more aligned with) the earlier supervision phases of Monitoring or Increased Supervision. Accordingly, the proposed regulation on informal enforcement actions would not include a headquarters meeting. If this change becomes final, SBA would amend SOP 50 53 to move headquarters meetings to the Monitoring/Increased Supervision chapters. In addition, proposed § 120.1300 would describe the types of informal enforcement actions listed. Finally, it would discuss the circumstances in which SBA is likely to take informal enforcement action (*e.g.,* when problems are narrow in scope, are correctible, and SBA is confident of the 7(a) Lender's Board and management commitment and ability to correct such problems; where violations are less frequent or less severe but still warrant enforcement; or while SBA more fully assesses risk). These proposed circumstances are, for the most part, set forth in SBA's current procedures. Finally, § 120.1300 would implement the new legislation providing that 7(a) Lenders could appeal informal enforcement actions to Federal district court or OHA. The informal enforcement action would remain in effect pending resolution of the appeal, if any. SBA would not be precluded from taking other action, including but not limited to, a formal enforcement action under § 120.1500, or as other otherwise authorized by law, while the appeal is pending.

H. *Section 120.1400—Grounds for Enforcement Actions—SBA Lenders.* Section 120.1400 sets forth the grounds

[7] S. Rep. No. 115–265 at 3 (2018).

for SBA's enforcement actions for SBA Lenders. The proposed rule would amend 13 CFR 120.1400 to implement several provisions of the new legislation and to provide clarifications. First, the proposed rule would amend § 120.1400(b) to explicitly state, and thereby formally recognize, that § 120.1400 grounds extend to both informal and formal enforcement actions. Second, in accordance with the new legislation, the proposed rule would state that SBA would consider the severity or frequency of a violation in determining the type of enforcement action to take. Third, § 120.1400(c)(6) would clarify that an action ''detrimental to an SBA program'' means an action detrimental to ''the integrity or reputation of'' an SBA program. Further, the proposed rule would also clarify paragraph (c)(9) to further inform the public that SBA considers an SBA Lender's failure to properly oversee Agent activity to be an example of SBA Lender action/inaction that increases SBA's financial risk. While Agents can be helpful in assisting SBA Lenders in making, servicing, liquidating, and litigating SBA loans, an SBA Lender must prudently oversee third-party activity.[8] SBA's policy of lender responsibility for third-party activity is neither new to the program nor unusual for regulated lenders. For purposes of this section, the term ''Agent'' means all parties included in the definition of ''Agent'' in 13 CFR part 103 that assist the 7(a) Lender or CDC with making, servicing, liquidating, or litigating their SBA business loans (*e.g.,* lender service providers, consultants, brokers/referral agents).

SBA would also clarify paragraphs (c)(11) and (12) of this section, which cover grounds for immediate suspension of delegated authority and program authority. Currently, these paragraphs provide for immediate action where it is needed to prevent significant impairment of the 7(a) or 504 Loan Program. The proposed rule would revise these paragraphs to better define the applicable circumstances. The proposed paragraph would state that SBA may take such immediate action upon a determination that: (i) One of the grounds in ''(c)'' or ''(f)'' of that section, as applicable, exists; and (ii) immediate action is needed to protect the interests of the Federal Government (such as where there is risk of immediate harm or loss, a significant program integrity concern, or clear evidence of conduct indicating a lack of business integrity). Situations that may warrant immediate suspension may include, but are not limited to, where there are significant findings relating to the SBA Lender's determination of eligibility (*e.g.,* credit elsewhere, etc.) or on the credit review, underwriting, approval, loan servicing and/or liquidation process; evidence of fraud; significant concerns as to the SBA Lender's financial condition, capital levels, or solvency; or where an SBA Lender is no longer licensed or lacks staff capable of making, servicing, or liquidating loans, as determined by SBA in its discretion. In addition, the revisions to paragraphs (d)(1)(iii) and (d)(3)(i) and (ii) would clarify that an SBA Supervised Lender's violation of ''the Small Business Act'' or ''SBA regulations'' is a violation of ''Loan Program Requirements''. This is consistent with SBA's use of this term in § 120.1400(c)(2) on noncompliance as a ground for enforcement action against SBA Lenders. In conjunction with this conforming change, SBA proposes deleting the word ''agreement'' from paragraph (d)(1)(iv) as it would be redundant with paragraph (d)(1)(iii) as revised.

I. *Section 120.1425—Grounds for Enforcement Actions—Intermediaries Participating in the Microloan Program.* The proposed rule would update § 120.1425 to remove references to NTAPs. Paragraph (c)(1) and (c)(2)(vii) on violations of law and Loan Program Requirements would be clarified and harmonized with the corresponding provision for SBA Lenders. In addition, SBA would reorder some of the grounds within the regulation and provide for more logical grouping. SBA would also add an additional performance-related ground for enforcement action: A failure to ''[m]aintain the financial ability to sustain the Intermediary's operations (including, but not limited to, adequate capital), as determined by SBA''. Maintenance of financial condition is important to an Intermediary's ability to continue to make small business loans and repay its Promissory Note(s) to SBA. Consistent with equivalent provisions for SBA Lenders, SBA would add two general grounds to the Microloan Program regulations: (i) Failure to take corrective actions and (ii) engaging in uncooperative or detrimental behavior; as well as a specific ground for immediate suspension of Intermediaries. Finally, SBA would add a catch-all provision, paragraph (c)(7), for other grounds otherwise authorized by law.

J. *Section 120.1500—Types of Formal Enforcement Actions—SBA Lenders.* Proposed revisions to § 120.1500 would implement the new legislative provision on civil monetary penalties as an enforcement tool for 7(a) Lenders. CMPs create a monetary incentive for 7(a) Lenders to comply with SBA Loan Program Requirements. This tool could be particularly effective as a deterrent against financial related non-compliance (*e.g.,* nonpayment or delay in payment of amounts owed to SBA for borrower payments, recoveries received, or fees owed). CMPs may also be warranted in certain critical circumstances (*e.g.,* where there is violation of an order, directive, or agreement, or fraud). SBA might also use CMPs where there are reporting failures or delays (other than those provided for in 13 CFR 120.465). These examples are not all inclusive. The proposed provision would include a list of considerations for SBA in determining whether and in what amount to assess a CMP. Those considerations are the same as those in 13 CFR 120.465(b) governing CMPs for reporting failures against SBA Supervised Lenders. The considerations/factors would include, but are not limited to, the following: The gravity (*e.g.,* severity and frequency) of the violation; history of violations; financial resources and good faith of the 7(a) Lender; and such other factors as justice may require. The list of considerations is also very similar to those in the CMP structures of other Federal agencies, including regulators with broad authority, such as the Office of Comptroller of the Currency and the Federal Deposit Insurance Corporation, as well as regulators with a narrower purview over loan guarantee programs, such as the Department of Housing and Urban Development's Mortgagee Review Board. SBA assessment of CMPs, as with SBA's other enforcement tools, would help to protect the integrity of the 7(a) Loan Program. In addition to the incorporation of CMPs, proposed § 120.1500 would reference the Lender Oversight Committee's role in formal enforcement actions, with their responsibilities set forth in Delegations of Authority and as authorized by the Act. Finally, § 120.1500 would include a technical amendment to include the term ''formal'' before ''enforcement action'' to distinguish the section from new § 120.1300 on informal enforcement actions.

K. *Section 120.1540—Types of Formal Enforcement Actions—Intermediaries.* The proposed rule would update

[8] In accordance with SOP 50 10 5 (K), Subpart A, Chpt. 1, Para. II.E.1.i, SBA expects lenders to exercise due diligence and oversight of their third-party vendors (*e.g.,* Lender Service Providers and other loan agents), including having written policies governing such relationships and monitoring the performance of their vendors. SBA will review such due diligence when conducting lender oversight activities.

§ 120.1540 to delete references to NTAPs. It would also include a technical amendment to include the term ''formal'' before ''enforcement action'' to distinguish the actions under this section from informal enforcement actions for Intermediaries set forth in SOP 50 53. The proposed regulation would revise the provision on suspension and pre-revocation sanctions to more closely conform with the suspension provision for SBA Lenders. Specifically, proposed § 120.1540 would provide that suspension may include, but is not limited to, suspension of the authority to make, service, liquidate, and/or litigate SBA microloans. It may also include a freeze on an Intermediary's Microloan Revolving Fund (''MRF'') and Loan Loss Reserve Fund (''LLRF'') accounts. Finally, proposed § 120.1540 would specify that SBA may undertake an ''immediate'' suspension action [9] (*i.e.,* a suspension that is effective immediately), and that revocation actions may include a portfolio surrender.

L. *Section 120.1600—General Procedures for Formal Enforcement Actions Against SBA Lenders, SBA Supervised Lenders, Other Regulated SBLCs, Management Officials, Other Persons, and Intermediaries.* Proposed changes to § 120.1600 would include a technical amendment to add the term ''formal'' before enforcement action in this section. It would also include a technical amendment that references alternate procedures under law, including but not limited to, those under current § 120.465 governing procedures for assessing CMPs against SBA Supervised Lenders for reporting failures. Section 120.1600 would be updated further to remove NTAPs from the regulation. In addition, the proposed rule would implement new legislation on enforcement action appeals. Specifically, 7(a) Lenders could appeal most formal enforcement actions to OHA or proceed directly to the appropriate Federal district court. Excluded are those formal enforcement actions against SBA Supervised Lenders under §§ 120.1500(c) and (d) and 120.465 because the statutory provisions in 15 U.S.C. 650 provide for separate procedures, which are covered in § 120.1600(b) or (c) and § 120.465. Any available OHA appeal would have to be submitted within 20 calendar days of the decision. The enforcement action would remain in effect pending resolution of any appeal.

[9] Intermediary suspensions, like those for SBA Lenders, may be ''proposed'' or ''immediate''.

M. *Section 134.102—Jurisdiction of OHA.* The proposed rule would amend § 134.102(d), which is currently reserved, to provide OHA jurisdiction to hear appeals of enforcement actions against 7(a) Lenders, as contemplated by the new legislation. Such jurisdiction does not include appeals for certain actions against SBA Supervised Lenders under § 120.1600(b) or (c) and § 120.465 (including, but not limited to, Cease and Desist Orders, Suspensions, and Revocations) as those procedures are provided for separately in 15 U.S.C. 650 as discussed above.

N. *Section 134.205—The appeal file, confidential information, and protective orders.* Title 13 CFR 134.205 governs the appeal file, confidential information, and protective orders when an action is appealed to OHA. Paragraph (c) lists types of information in the appeal file that are exempt from public access. The exempt information includes, but is not limited to, sensitive, confidential and other exempt information. The proposed rule would add to the list of exempt information, documents and related information covered under 13 CFR 120.1060.

Compliance With Executive Orders 12866, 13563, 12988, 13132, 13771, the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a ''significant'' regulatory action for the purposes of Executive Order 12866. In the interest of transparency, however, SBA has drafted a Regulatory Impact Analysis for the public's information in the next section. This is not a major rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

Public Law 115–189, the Small Business 7(a) Lending Oversight Reform Act of 2018, requires that SBA issue regulations to carry out certain provisions contained therein. This rule includes proposed regulations that would implement the Act. In addition, the rule would update and clarify certain lender oversight regulations (*e.g.,* remove reference to NTAPs and include some clarifications to better inform the public). The proposed lender oversight rule would strengthen SBA supervision of SBA Lenders, especially 7(a) Lenders, and protect the integrity of SBA's business loan programs.

2. What are the potential benefits and costs of this regulatory action?

The benefits of the proposed rule would be improved lender oversight that could help reduce unnecessary losses for SBA, SBA Lenders, and Intermediaries. With effective supervision, lenders are provided feedback to assist them in complying with SBA Loan Program Requirements and to promote prudent lending. The updates and clarifications in this proposed rule are intended to reduce uncertainties in order to help avoid unnecessary costs.

SBA does not anticipate any additional costs or impact on the subsidy to operate the business loan programs under the proposed rule. Most of the revisions codify current practices. Further, the Agency also does not, apart from the civil monetary penalties, expect additional costs to lenders from the provisions that implement the legislation. Regarding the CMPs for 7(a) Lenders, the CMPs are statutorily authorized and limited to $250,000, subject to annual adjustments in accordance with section 701 of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 (November 2, 2015). SBA anticipates that 7(a) Lenders will take corrective actions expeditiously, and as a result, few CMPs may need to be administered. SBA does not anticipate any additional costs from the technical corrections or clarifications as these specify actions that lenders should already be taking (*e.g.,* implementing corrective actions required within the requisite 90 days, adequately training staff, maintaining loan file documentation consistent with prudent lending, and adhering to all other SBA requirements).

3. What alternatives have been considered?

Since the proposed rule would primarily implement statutory provisions, the Agency is somewhat limited in its alternatives. Regarding CMPs for 7(a) Lenders, the Agency researched the CMP structures of other agencies, including the banking agencies and other Federal guaranteed loan programs. We found that these CMP structures are typically very complex and may be tiered due to detailed statutory schemes, with the potential for maximum CMPs that are several times larger than SBA's. This is very different from the general CMP authority that Congress provided to SBA. Therefore, SBA did not opt for a complex cumbersome structure. SBA, however, included in its proposal factors similar to those in the banking agencies' CMP regulations, the Department of Housing and Urban Development's CMP regulations,[10] and current § 120.465 that allow for consideration of the facts and circumstances of the underlying activity. Under the proposed rule, SBA would consider the following factors in determining whether and in what amount SBA would assess CMPs against 7(a) Lenders: The gravity (*e.g.,* severity and frequency) of the violations; history of violations; financial resources and good faith of the 7(a) Lender; and such other factors as justice may require. The Agency will also consider alternatives proposed in public comments and suggestions on how SBA can otherwise implement the statutory provisions responsibly without compromising the improvements to supervision intended by the legislation.

Executive Order 13563

Executive Order 13563 supplements and reaffirms the principles and requirements of Executive Order 12866, including providing the public notice and an opportunity to comment on regulatory changes. Consistent with the requirements of that executive order, a description of the need for this regulatory action and the benefits and costs associated with this action—including distributional impacts—if any, are contained above in the Regulatory Impact Analysis provided for Executive Order 12866. The Agency has participated in public forums and meetings that have included outreach to hundreds of its lending partners to seek valuable insight and suggestions for the program. These forums include, but are not limited to, the National Association of Government Guaranteed Lenders Technical Conference; the Southeast Regional Lenders' Conference; and the Mid-America Lenders' Conference.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action would not have retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this proposed rule would 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. Therefore, for the purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13771

This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule would not impose additional recordkeeping or reporting requirements under the Paperwork Reduction Act (PRA). The only provision relating to recordkeeping is the proposed revision to § 120.180, in which SBA would clarify that SBA Lenders and Intermediaries must maintain documentation to support compliance with SBA Loan Program Requirements. Recordkeeping and reporting associated with this provision would be covered by currently approved information collections for SBA's business loan programs, including but not limited to, collections under OMB Control Numbers 3245–0071, Application for section 504 Loan (SBA Forms 1244 and 2450); 3245–0074, Certified Development Company (CDC) Annual Report Guide (SBA Form 1253); 3245–0080 and 0178, Statement of Personal History (SBA Forms 1081 and 912); 3245–0131, Transaction Report on Loans Serviced by Lender (SBA Form 172); 3245–0132, Lender's Transcript of Account (SBA Form 1149); 3245–0201, Compensation Agreement (SBA Form 159); 3245–0346, PCLP Quarterly Loan Loss Reserve Report and PCLP Guarantee Request (SBA Forms 2233 and 2234 A, B, and C); 3245–0348, Borrower Information Form (SBA Form 1919), Lenders Application for Guaranty (SBA Form 1920), Religious Eligibility Worksheet (SBA Form 1971), 7(a) Loan Post Approval Action Checklist (SBA Form 2237); 3245–0352, Microloan Program Electronic Reporting System (MPERS) (MPERsystem); and 3245–0365, SBA Lender, Microloan Intermediary and NTAP Reporting Requirements. Prudent lenders should already be maintaining such documentation.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment an initial regulatory analysis'' which will ''describe the impact of the proposed rule on small entities.'' Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The changes in the proposed rule would generally fall into one of two categories: (i) Technical amendments/clarifications or (ii) codifications of the new legislation or existing practices. Examples of the technical amendments and clarifications would include the proposed change to: The § 120.10 definition for Federal Financial Institution Regulator to delete reference to the Office of Thrift Supervision, which was merged into other Federal banking agencies; the proposed removal of references to NTAPs in 120.1000, 120.1010, 120.1015, 120.1025, 120.1050, 120.1051, 120.1055, 120.1060, 120.1425, 120.1540, and 120.1600 as SBA has not issued technical assistance grants to NTAPs in many years and such assistance is being administered directly by Microloan Intermediaries; and the proposed incorporation into § 120.180 of the current requirement that Intermediaries must comply with the Microloan Program requirements.

Although the technical corrections/clarifications portion of the proposed rule might affect some of the approximately 3,500 7(a) Lenders (approximately 2,000 of which are small); 213 CDCs (all of which are small); and 147 Microloan Intermediaries (all of which are small), SBA does not believe it would have a significant economic impact on those small entities. Rather, the clarifications to some extent might even reduce the burdens by better informing SBA Lenders and Intermediaries of how the Agency may apply a regulation or requirement. As such, SBA Lenders and Intermediaries may potentially avoid the need to spend extra time and resources interpreting the regulations.

The second category consists of regulation changes in the rule that would codify or implement the new legislation or existing practices. Examples of the regulations and their changes that would codify or implement the new legislation include: The § 120.101 incorporation of the new statutory definition for credit elsewhere; the § 120.1055 revision to the timeframe from 30 to 45 days for an SBA Lender or Intermediary to respond to findings and corrective actions; the §§ 120.1300, 120.1600, and 134.102 inclusion of an OHA appeal for a 7(a) Lender enforcement action; and the

[10] See, 24 CFR 30.80.

§ 120.1500(b) addition of CMPs for a 7(a) Lender. Examples of regulations and their changes that would codify current practices and procedures include: The § 120.1055 (90 day) addition of a timeframe for implementation of corrective actions; the § 120.1300 inclusion of voluntary agreements and Board Resolutions as informal enforcement actions; and the application in § 120.1400 of the same grounds for informal as formal enforcement actions for an SBA Lender.

While a few of the codifying provisions might have the potential of a significant economic impact, SBA does not expect that it would impact a substantial number of small businesses. In particular, SBA does not anticipate that any changes to the enforcement regulations, including the incorporation of a CMP for 7(a) Lenders in proposed § 120.1500(b), would be burdensome to a substantial number of small lenders. This is because SBA has historically taken only a small number of enforcement actions. The Agency seeks to educate and work with SBA Lenders and Intermediaries using graduated processes for the entity to reduce risk and come into compliance. Specifically, SBA educates SBA Lenders and Intermediaries on SBA Loan Program Requirements through notices, webinar and teleconference training venues, and at conferences. When SBA identifies risk or noncompliance through monitoring or reviews, SBA generally seeks to work with the SBA Lender or Intermediary through the corrective action process or increased supervision to address SBA concerns. As a result, most SBA Lenders and Intermediaries come into compliance and avoid facing enforcement actions.

SBA generally takes enforcement action only when the entity cannot sufficiently reduce risk, cannot correct serious noncompliance, or where the entity does not have the willingness or ability to correct. In FY 2018, SBA took nine enforcement actions against SBA Lenders and Intermediaries, which is not a substantial number.

One of the proposed rule changes to SBA's enforcement regulations would be the CMP provisions. The CMP provisions would be applicable only to 7(a) Lenders and by statute could be assessed in an enforcement action up to $250,000. As proposed, the CMP provisions would provide flexibility to allow SBA to take into account factors, including the financial resources of a 7(a) Lender (especially for small lenders), in determining whether and in what amount to assess a CMP.

SBA believes these provisions would not have a significant impact on a substantial number of small 7(a) Lenders, as most 7(a) Lenders generally comply with SBA Loan Program Requirements. In fact, only five enforcement actions in FY 2018 were taken against 7(a) Lenders. Therefore, we do not anticipate that SBA would need to assess CMPs with any frequency. Further, given the flexibility in determining the amount of the penalty, even if imposed, the proposed penalty could be assessed in an amount much less than $250,000.

For the reasons stated above, SBA certifies that this action would not have a significant economic impact on a substantial number of small entities. SBA invites comment from members of the public.

List of Subjects.

13 CFR Part 120

Community development, Loan programs—business, Small businesses.

13 CFR Part 134

Appeal Procedures, Confidential business information.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 120 and 134 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b) (6), (b) (7), (b) (14), (h), and note, 636(a), (h) and (m), and note, 650, 657t, and note, 657u, and note, 687(f), 696(3) and (7), and note, and 697(a) and (e); and note.

■ 2. Amend § 120.10 by revising the definitions for ''Federal Financial Institution Regulator'', ''Lender Oversight Committee'', and ''Loan Program Requirements'' to read as follows:

§ 120.10 Definitions.

* * * * *

Federal Financial Institution Regulator is the Federal banking regulator of a 7(a) Lender and may include the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Farm Credit Administration.

* * * * *

Lender Oversight Committee (''LOC'') is a committee established within SBA by legislation, which meets at least quarterly, and which has the membership and duties set forth in the Small Business Act as further outlined in Delegations of Authority published in the **Federal Register**. The LOC's duties include, but are not limited to, reviewing and voting on formal enforcement action recommendations.

* * * * *

Loan Program Requirements or *SBA Loan Program Requirements* are requirements imposed upon Lenders, CDCs, or Intermediaries by statute; SBA and applicable government-wide regulations; any agreement the Lender, CDC, or Intermediary has executed with SBA; SBA SOPs; **Federal Register** notices; official SBA notices and forms applicable to the 7(a) Loan Program, 504 Loan Program or Microloan Program; and loan authorizations, as such requirements are issued and revised by SBA from time to time. For CDCs, this term also includes requirements imposed by Debentures, as that term is defined in § 120.802. For Intermediaries, this term also includes requirements imposed by promissory notes, collateral documents, and grant agreements.

* * * * *

■ 3. Amend § 120.101 by revising the first and second sentences to read as follows:

§ 120.101 Credit not available elsewhere.

SBA provides business loan assistance only to applicants for whom the desired credit is not otherwise available on reasonable terms from non-Federal, non-State, and non-local government sources. SBA requires the Lender or CDC to certify or otherwise show that the desired credit is unavailable to the applicant on reasonable terms and conditions from non-Federal, non-State, and non-local government sources without SBA assistance, taking into consideration factors associated with conventional lending practices, including: The business industry of the loan applicant; whether the loan applicant has been in operation two years or less; the adequacy of collateral available to secure the loan; the loan term necessary to reasonably assure repayment of the loan from business cash flow; and any other factor relating to the particular loan application that cannot be overcome except through obtaining a Federal loan guarantee under prudent lending standards. * * *

■ 4. Revise § 120.180 to read as follows:

§ 120.180 Compliance with Loan Program Requirements.

SBA Lenders and Intermediaries must comply and maintain familiarity with Loan Program Requirements for the 7(a) Loan Program, 504 Loan Program, and the Microloan Program, as applicable, and as such requirements are revised from time to time. Loan Program Requirements in effect at the time that an SBA Lender or Intermediary takes an action in connection with a particular loan govern that specific action. For example, although loan closing requirements in effect when an SBA Lender closes a loan will govern the closing actions, an SBA Lender's liquidation actions on the same loan are subject to the liquidation requirements in effect at the time that a liquidation action is taken. An SBA Lender or Intermediary must maintain sufficient documentation to demonstrate that Loan Program Requirements have been satisfied.

■ 5. Revise § 120.1000 to read as follows:

§ 120.1000 Risk-Based Lender Oversight.

(a) *Risk-Based Lender Oversight.* SBA monitors, supervises, examines, regulates, and enforces laws against, SBA Supervised Lenders and the SBA operations of SBA Lenders and Intermediaries.

(b) *Scope.* Most rules and standards set forth in this subpart apply to SBA Lenders as well as Intermediaries; however, SBA has separate regulations for enforcement grounds and formal enforcement actions for Intermediaries at §§ 120.1425 and 120.1540.

§ 120.1010 [Amended]

■ 6. Amend § 120.1010 by removing the phrase ''SBA Lender, Intermediary, and NTAP'' and adding in its place the phrase ''SBA Lender and Intermediary''.

§ 120.1015 [Amended]

■ 7. Amend § 120.1015 by removing the phrase ''SBA Lenders, Intermediaries, and NTAPs'' wherever it appears and adding in its place the phrase ''SBA Lenders and Intermediaries''.

■ 8. Revise § 120.1025 to read as follows:

§ 120.1025 Monitoring.

SBA may conduct monitoring of SBA Lenders and Intermediaries including, but not limited to, SBA Lenders' or Intermediaries' self-assessments.

§ 120.1050 [Amended]

■ 9. In § 120.1050(c), remove the phrase ''and NTAPs'' wherever it appears.

■ 10. In § 120.1051, revise the first sentence of the introductory text and paragraph (a) to read as follows:

§ 120.1051 Frequency of reviews and examinations.

SBA may conduct reviews and examinations of SBA Lenders and Intermediaries on a periodic basis.
* * *

(a) Results of monitoring, including an SBA Lender's or Intermediary's Risk Rating;

* * * * *

■ 11. Amend § 120.1055 by:
■ a. Revising paragraphs (a) and (b); and
■ b. In paragraph (d):
■ i. Removing the phrase ''SBA Lender, Intermediary, or NTAP'' wherever it appears and adding in its place the phrase ''SBA Lender or Intermediary'';
■ ii. Removing ''Subpart I'' and adding in its place ''this subpart''; and
■ iii. Removing the reference ''§ 120.1500 through § 120.1540'' wherever it appears and adding in its place the phrase ''this subpart''.

The revisions to read as follows:

§ 120.1055 Review and examination results.

(a) *Written Reports.* SBA will provide an SBA Lender and Intermediary a copy of SBA's written report prepared as a result of the SBA Lender or Intermediary review or examination (''Report''). The Report may contain findings, conclusions, corrective actions and recommendations. Each director (or manager, in the absence of a Board of Directors) of the SBA Lender or Intermediary, in keeping with his or her responsibilities, must become fully informed regarding the contents of the Report.

(b) *Response to review and examination Reports.* SBA Lenders and Intermediaries must respond to Report findings, recommendations, and corrective actions, if any, in writing to SBA and, if requested, submit proposed corrective actions and/or a capital restoration plan. An SBA Lender or Intermediary must respond within 45 calendar days from the date the Report is received unless SBA notifies the SBA Lender or Intermediary in writing that the response, proposed corrective actions or capital restoration plan is to be filed within a different time period. The SBA Lender or Intermediary response must address each finding, recommendation, and corrective action. In proposing a corrective action or capital restoration plan, the SBA Lender or Intermediary must detail: The steps it will take to correct the finding(s); the time within which each step will be taken; the timeframe for accomplishing the entire corrective action plan; and the person(s) or department at the SBA Lender or Intermediary charged with carrying out the corrective action or capital restoration plan, as applicable. In addition, SBA Lenders and Intermediaries must implement corrective actions within 90 calendar days from the date the Report or SBA's letter requiring corrective action is received, unless SBA provides written notice of another timeframe. For purposes of this paragraph, a Report will be deemed to have been received on the date it was emailed to the last known email address of the SBA Lender or Intermediary unless the SBA Lender or Intermediary can provide compelling evidence to the contrary.

* * * * *

§ 120.1060 [Amended]

■ 12. Amend § 120.1060 by:
■ i. Removing the phrase ''SBA Lender, Intermediary, and NTAP'' wherever it appears and adding in its place the phrase ''SBA Lender and Intermediary'';
■ ii. Removing the phrase ''SBA Lenders, Intermediaries, and NTAPs'' and adding in its place the phrase ''SBA Lenders and Intermediaries'';
■ iii. Removing the phrase ''SBA Lender's, Intermediary's, or NTAP's'' and adding in its place the phrase ''SBA Lender's or Intermediary's'';
■ iv. Removing the phrase ''SBA Lender, Intermediary, or NTAP'' and adding in its place the phrase ''SBA Lender or Intermediary''.

■ 13. Add § 120.1300 immediately following the undesignated center heading ''Enforcement Actions'' to read as follows:

§ 120.1300 Informal enforcement actions—7(a) Lenders.

(a) Upon a determination that the grounds in § 120.1400 exist, SBA may undertake, in SBA's discretion, one or more of the informal enforcement actions listed in this section. SBA will consider the severity or frequency of the violation or action triggering the ground and the circumstances in determining whether and what type of informal action to take. Circumstances that may lead to SBA taking informal enforcement action rather than formal enforcement action include, for example, when problems are narrow in scope and are correctible and SBA is confident of a 7(a) Lender's Board of Directors (''Board'') and management commitment and ability to correct; where violations are less frequent or less severe but warrant enforcement; or while more fully assessing risk.

(b) Informal enforcement actions include, but are not limited to:

(1) *An SBA supervisory letter.* The letter may discuss serious or persistent supervisory concerns, as determined by SBA, and expected corrective action by the 7(a) Lender. Supervisory letters include, for example, Notices of Material Non-Compliance;

(2) *Mandatory training.* SBA may require a 7(a) Lender to complete

training to address certain findings, weaknesses, and deficiencies;

(3) *A commitment letter or Board resolution.* SBA may require a 7(a) Lender to submit a commitment letter or Board resolution, satisfactory to SBA, signed by the 7(a) Lender's Board on behalf of the entity that may:

(i) Include specific written commitments to take corrective actions in response to the 7(a) Lender's acknowledged deficiencies;

(ii) Identify the person(s) responsible for taking the corrective action; and

(iii) Set forth the timeframe for taking the corrective action. The document may be drafted by SBA or the 7(a) Lender;

(4) *Agreements.* SBA may request that a 7(a) Lender enter into a written agreement with, and drafted by, SBA to address and correct identified weaknesses and/or limit or mitigate risk. The agreement may provide, for example, that a 7(a) Lender take certain actions or refrain from certain actions; and

(5) *Other informal enforcement actions.* Others as SBA determines appropriate on a case by case basis.

(c) A 7(a) Lender may appeal informal enforcement actions to the appropriate Federal district court or SBA's Office of Hearings and Appeals (OHA) within 20 calendar days of the date of the decision, and in the event of an OHA appeal, OHA will issue its decision in accordance with part 134 of this title. The enforcement action will remain in effect pending resolution of the appeal, if any. SBA is not precluded from taking one or more formal enforcement actions under § 120.1500, or as otherwise authorized by law, while an appeal of an informal enforcement action is pending.

■ 14. Amend § 120.1400 by revising the first sentence and adding a sixth sentence in paragraph (b) and revising the first sentence in paragraph (c)(6) and paragraphs (c)(9), (11), and (12), (d)(1)(iii) and (iv), and (d)(3)(i) and (ii) to read as follows:

§ 120.1400 Grounds for enforcement actions—SBA Lenders.

* * * * *

(b) *Scope.* SBA may undertake one or more of the enforcement actions listed in §§ 120.1300 and 120.1500, or as otherwise authorized by law, if SBA determines that the grounds applicable to the enforcement action exist. * * * SBA considers the severity or frequency of a violation in determining whether to take an enforcement action and the type of enforcement action to take.

(c) * * *

(6) Engaging in a pattern of uncooperative behavior or taking an action that SBA determines is detrimental to the integrity or reputation of an SBA program, that undermines management or administration of a program, or that is not consistent with standards of good conduct. * * *

* * * * *

(9) Any other reason that SBA determines may increase SBA's financial risk (for example, repeated Less Than Acceptable Risk Ratings (generally in conjunction with other indicators of increased financial risk); failure to properly oversee Agent activity (''Agent'' as defined in part 103 of this title); or, indictment on felony or fraud charges of an officer, key employee, or loan agent involved with SBA loans for the SBA Lender);

* * * * *

(11) For immediate suspension of all SBA Lenders from delegated authorities—upon a determination by SBA that:

(i) One or more of the grounds in paragraph (c) or (f) of this section, as applicable, exists; and

(ii) Immediate action is needed to protect the interests of the Federal Government (such as where there is risk of immediate harm or loss, a significant program integrity concern, or clear evidence of conduct indicating a lack of business integrity).

(12) For immediate suspension of all SBA Lenders (except SBA Supervised Lenders, which are covered under § 120.1400(d)(2)) from the authority to participate in the SBA loan program, including the authority to make, service, liquidate, or litigate 7(a) or 504 loans—upon a determination by SBA that:

(i) One or more of the grounds in paragraph (c) or (f) of this section, as applicable, exists; and

(ii) Immediate action is needed to protect the interests of the Federal Government (such as where there is risk of immediate harm or loss, a significant program integrity concern, or clear evidence of conduct indicating a lack of business integrity).

(d) * * *

(1) * * *

(iii) A willful or repeated violation of SBA Loan Program Requirements; or

(iv) A willful or repeated violation of any condition imposed by SBA with respect to any application or request with SBA; or

* * * * *

(3) * * *

(i) A violation of SBA Loan Program Requirements; or

(ii) Where an SBA Supervised Lender or Other Person engages in or is about to engage in any acts or practices that will violate SBA Loan Program Requirements.

* * * * *

■ 15. Amend § 120.1425 by:

■ a. Revising the section heading and paragraphs (a), and (b);

■ b. In paragraph (c) introductory text:

■ i. Removing the dash after the paragraph heading and adding a period in its place; and

■ ii. Removing the phrase ''Intermediary or NTAP'' wherever it appears and adding in its place the phrase ''Intermediary'';

■ c. Revising paragraph (c)(1);

■ d. Removing the phrase ''Intermediaries and NTAPs'' and adding in its place the phrase ''Intermediaries'' in paragraph (c)(2)(i);

■ e. Revising paragraphs (c)(2)(vii) and (viii);

■ f. Adding paragraphs (c)(2)(ix) and (x) and (c)(3) through (7);

■ g. Removing paragraphs (d) and (e).

The revisions and additions read as follows:

§ 120.1425 Grounds for formal enforcement actions—Intermediaries participating in the Microloan Program.

(a) *Agreement.* By participating in the SBA Microloan Program, Intermediaries automatically agree to the terms, conditions, and remedies in this part as if fully set forth in their participation agreement and all other agreements jointly executed by the Intermediary and SBA.

(b) *Scope.* SBA may undertake one or more of the formal enforcement actions listed in § 120.1540, or as otherwise authorized by law, if SBA determines that any of the grounds listed in paragraph (c) of this section exist.

(c) * * *

(1) Failure to comply materially with any requirement imposed by Loan Program Requirements;

(2) * * *

(vii) Maintain a staff trained in Microloan Program issues and Loan Program Requirements;

(viii) Maintain the financial ability to sustain the Intermediary's operations (including, but not limited to, adequate capital), as determined by SBA;

(ix) Satisfactorily provide in-house technical assistance to Microloan borrowers and prospective Microloan borrowers; or

(x) Close and fund the required number of microloans per year under § 120.716;

(3) Failure within the time period specified to correct an underwriting, closing, disbursing, servicing, liquidation, litigation, or reporting deficiency, or failure in any material

respect to take other corrective action, after receiving notice from SBA of a deficiency and the need to take corrective action;

(4) Engaging in a pattern of uncooperative behavior or taking an action that SBA determines is detrimental to the integrity or reputation of the Microloan Program, that undermines management or administration of the program, or that is not consistent with standards of good conduct. Prior to issuing a notice of a proposed formal enforcement action or immediate suspension under § 120.1540 based upon the grounds discussed in this paragraph, SBA must send prior written notice to the Intermediary explaining why the Intermediary's actions were uncooperative, detrimental to the program, undermined SBA's management of the program, or were not consistent with standards of good conduct. The prior notice must also state that the Intermediary's actions could give rise to a specified formal enforcement action, and provide the Intermediary with a reasonable time to cure the deficiency before any further action is taken;

(5) Any other reason that SBA determines may increase SBA's financial or program risk (for example, repeated Less Than Acceptable Risk Ratings (generally in conjunction with other indicators of increased risk) or indictment on felony or fraud charges of an officer, key employee, or loan agent involved with SBA programs for the Intermediary);

(6) For immediate suspension of an Intermediary—upon a determination by SBA that:

(i) One or more of the grounds in paragraph (c) of this section exists; and

(ii) Immediate action is needed to protect the interests of the Federal Government (such as where there is risk of immediate harm or loss, a significant program integrity concern, or clear evidence of conduct indicating a lack of business integrity); and

(7) As otherwise authorized by law.

■ 16. Amend § 120.1500 by revising the section heading, the introductory text, paragraph (a) heading, paragraph (b), paragraph (c) introductory text heading, paragraph (c)(4), paragraph (d) introductory text heading, and paragraph (e) introductory text heading to read as follows:

§ 120.1500 Types of formal enforcement actions—SBA Lenders.

Upon a determination that the grounds set forth in § 120.1400 exist, SBA may undertake, in SBA's discretion (and with the involvement of the Lender Oversight Committee as appropriate and consistent with its assigned responsibilities), one or more of the following formal enforcement actions for each of the types of SBA Lender listed. SBA will consider the severity or frequency of the violation or action and the circumstances triggering the ground in determining whether and what type of enforcement action to take. SBA will take formal enforcement action in accordance with procedures set forth in § 120.1600. If formal enforcement action is taken under this section and the SBA Lender fails to implement required corrective action in any material respect within the required timeframe in response to the formal enforcement action, SBA may take further enforcement action, as authorized by law. SBA's decision to take a formal enforcement action will not, by itself, invalidate a guaranty previously provided by SBA.

(a) *Formal enforcement actions for all SBA Lenders.* * * *

(b) *Formal enforcement actions specific to 7(a) Lenders.* In addition to those formal enforcement actions applicable to all SBA Lenders, SBA may take the following actions:

(1) Secondary market suspension or revocation (other than temporary suspension and revocation under § 120.660). SBA may suspend or revoke a 7(a) Lender's authority to sell or purchase loans or certificates in the Secondary Market; or

(2) Civil monetary penalty (other than SBA Supervised Lender civil monetary penalty under § 120.465). SBA may assess a civil monetary penalty against a 7(a) Lender. The civil monetary penalty will be in an amount not to exceed the maximum published in the **Federal Register** from time to time. In determining whether to assess a civil monetary penalty and, if so, in what amount, SBA may consider, for example, the following: The gravity (*e.g.,* severity and frequency) of the violation; the history of previous violations; the financial resources and good faith of the 7(a) Lender; and any other matters as justice may require.

(c) *Formal enforcement actions specific to SBA Supervised Lenders and Other Persons (except Other Regulated SBLCs).* * * *

(4) *Civil monetary penalties for report filing failure under § 120.465.* SBA may seek civil penalties, in accordance with § 120.465, against an SBA Supervised Lender that fails to file any regular or special report by its due date as specified by regulation or SBA written directive.

(d) *Formal enforcement actions specific to SBLCs.* * * *

(e) *Formal enforcement actions specific to CDCs.* * * *

■ 17. Revise § 120.1540 to read as follows:

§ 120.1540 Types of formal enforcement actions—Intermediaries participating in the Microloan Program.

Upon a determination that any ground set out in § 120.1425 exists, the SBA may take, in its discretion, one or more of the following formal enforcement actions against an Intermediary:

(a) *Suspension.* SBA may suspend an Intermediary's authority to participate in the Microloan Program, which may include, but is not limited to, the authority to make, service, liquidate, and/or litigate SBA microloans, and the imposition of a freeze on the Intermediary's MRF and LLRF accounts.

(b) *Immediate suspension.* SBA may suspend, effective immediately, an Intermediary's authority to participate in the Microloan Program, which may include, but is not limited to, the authority to make, service, liquidate, and/or litigate SBA microloans, and the imposition of an immediate freeze on the Intermediary's MRF and LLRF accounts. Section 120.1425(c)(6) sets forth the grounds for SBA Microloan Program immediate suspension of an Intermediary.

(c) *Revocation.* SBA may revoke an Intermediary's authority to participate in the Microloan Program which may include, but is not limited to:

(1) Removal from the program;

(2) Liquidation of the Intermediary's MRF and LLRF accounts by SBA, and application of the liquidated funds to any outstanding balance owed to SBA;

(3) Payment of outstanding debt to SBA by the Intermediary;

(4) Forfeiture or repayment of any unused grant funds by the Intermediary;

(5) Debarment of the organization from receipt of Federal funds until loan and grant repayments are met; and

(6) Surrender of possession of Intermediary's SBA microloan portfolio to SBA, with the microloan portfolio and all associated rights transferred on a permanent basis to SBA, in accordance with SBA's rights as a secured creditor.

(d) *Other actions.* Such other actions available under law.

■ 18. Amend § 120.1600 by:

■ a. Removing the phrase ''SBA Lender, Intermediary, or NTAP'' wherever it appears and adding in its place the phrase ''SBA Lender or Intermediary'';

■ b. Removing the phrase ''SBA Lender, Intermediary, or NTAP's'' wherever it appears and adding in its place the phrase ''SBA Lender's or Intermediary's'';

■ c. Revising the section heading and introductory text to paragraph (a);
■ d. Adding the word ''formal'' before the word ''enforcement'' wherever it appears in paragraphs (a)(1) through (4).
■ e. Removing the phrase ''SBA Lender, Intermediary, NTAP or SBA,'' and adding in its place the phrase ''SBA Lender, Intermediary, or SBA,'' in paragraph (a)(1)(ii);
■ f. Removing the phrase ''final decision'' wherever it appears and adding in its place the phrase ''final agency decision'' in paragraphs (a)(2) through (4);
■ g. Revising the headings for paragraphs (a)(3) and (4) and paragraph (a)(5); and
■ h. Adding the word ''formal'' before the word ''enforcement'' in the headings for paragraphs (b) and (c).

The revisions read as follows:

§ 120.1600 General procedures for formal enforcement actions against SBA Lenders, SBA Supervised Lenders, Other Regulated SBLCs, Management Officials, Other Persons, and Intermediaries.

(a) *In general.* Except as otherwise set forth for the formal enforcement actions listed in paragraphs (a)(6), (b), and (c) of this section and in § 120.465, SBA will follow the procedures listed in this section.

* * * * *

(3) *SBA's notice of final agency decision on a formal enforcement action where an SBA Lender or Intermediary filed objection to the proposed action or immediate suspension.* * * *

(4) *SBA's notice of final agency decision on a formal enforcement action where no filed objection or untimely objection not considered.* * * *

(5) *Appeals.* An SBA Lender or Intermediary may appeal the final agency decision to the appropriate Federal district court. Alternatively, 7(a) Lenders may appeal such actions (except for actions against SBA Supervised Lenders that are covered by procedures in § 120.1600(b) or (c) or § 120.465), to SBA's Office of Hearings and Appeals (''OHA'') within 20 calendar days of the date of the decision, and in the event of such an appeal, OHA will issue its decision in accordance with part 134 of this title. The enforcement action will remain in effect pending resolution of the appeal, if any.

* * * * *

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 19. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), 657t, and 687(c); 38 U.S.C. 8127(f); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 38 U.S.C. 8127(f)(8)(B).

Subpart K issued under 38 U.S.C. 8127(f)(8)(A).

■ 20. Amend § 134.102 by adding paragraph (d) to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(d) Appeals from informal and formal enforcement actions against 7(a) Lenders, and any other appeal that is specifically authorized by part 120 of this title, but not including appeals of actions against SBA Supervised Lenders under § 120.1600(b) or (c) or under § 120.465;

* * * * *

■ 21. Amend § 134.205 by revising paragraph (c) to read as follows:

§ 134.205 The appeal file, confidential information, and protective orders.

* * * * *

(c) *Public access.* Except for confidential business and financial information; source selection sensitive information; income tax returns; documents and information covered under § 120.1060 of this title; and other exempt information, the appeal file is available to the public pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

* * * * *

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–12631 Filed 6–20–19; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0437; Product Identifier 2019–NM–074–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 757–200, –200CB, and –300 series airplanes. This proposed AD was prompted by reports of cracks in the fuselage frame web at body station (STA) 1640. This proposed AD would require, depending on configuration, a general visual inspection for any previous repair, such as any reinforcing repair or local frame replacement repair, repetitive open hole high frequency eddy current (HFEC) inspections for any crack of the fuselage frame web fastener holes, on the left and right side of the airplane, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 5, 2019.

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 Boeing service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.*

For Aviation Partners Boeing service information identified in this NPRM, contact Aviation Partners Boeing, 2811 South 102nd St., Suite 200, Seattle, WA 98168; phone: 206–830–7699; fax: 206–767–0535; email: *leng@aviationpartners.com;* internet: *http://www.aviationpartnersboeing.com.*

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. Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018, is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0437.

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–2019–0437; 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 is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Peter Jarzomb, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5234; fax: 562–627–5210; email: *peter.jarzomb@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites 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–2019–0437; Product Identifier 2019–NM–074–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this proposed AD.

Discussion

The FAA has received reports of cracks found on several airplanes while performing inspections in an area adjacent to the inspection areas specified in Boeing Alert Service Bulletin 757–53A0108. The cracks reported were not considered in the inspections specified in Boeing Alert Service Bulletin 757–53A0108 because the crack initiation sites, at issue here, were discovered after the release of Boeing Alert Service Bulletin 757–53A0108. The airplanes had between 20,536 and 39,850 total flight cycles at the time of reporting. Three of the cracks were confirmed to have initiated at a fastener common to the STA 1640 fuselage frame web and intercostal tee clip at stringer 14, on the left side. The fuselage frame web cracking is attributed to fatigue caused by flight loads and fuselage pressurization with higher than predicted stresses. This condition, if not addressed, could result in reduced structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information.

- Aviation Partners Boeing (APB) Alert Service Bulletin AP757–53–002, Revision 2, dated April 11, 2019.
- Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018.

The service information describes procedures for, depending on configuration, a general visual inspection for any previous repair, such as any reinforcing repair or local frame replacement repair, repetitive open hole HFEC inspections for any crack of the fuselage frame web fastener holes, on the left and right side of the airplane, and applicable on-condition actions. On-condition actions include installation of fasteners and repair. 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.

FAA's Determination

The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified in Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would also require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of APB Alert Service Bulletin AP757–53–002, Revision 2, dated April 11, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD. Please note that the initial compliance times for the airplanes identified in APB Alert Service Bulletin AP757–53–002, Revision 2, dated April 11, 2019, range from within 500 flight cycles after the effective date of this AD, to within 16,000 flight cycles after the installation of the local frame replacement or before 50,000 total flight cycles, whichever occurs first depending on configuration. The repetitive intervals range from 5,200 flight cycles to 9,900 flight cycles, depending on configuration.

For information on the procedures and compliance times, see Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018, at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0437.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are RC with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Costs of Compliance

The FAA estimates that this proposed AD affects 475 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
General Visual Inspection	35 work-hours × $85 per hour = $2,975	$0	$2,975	$1,413,125.

ESTIMATED COSTS FOR REQUIRED ACTIONS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Open Hole HFEC Inspection.	35 work-hours × $85 per hour = $2,975 per inspection cycle.	0	$2,975 per inspection cycle.	$1,413,125 per inspection cycle.

The FAA estimates the following costs to do any necessary on-condition fastener installations that would be required. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION FASTENER INSTALLATIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$*	$85 *

* The FAA has received no definitive data that would enable the agency to provide cost estimates for the parts cost of the on-condition fastener installation specified in this proposed AD.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition repair specified in this proposed AD.

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.

The FAA is 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 and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA 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) Will not affect intrastate aviation in Alaska, and

(3) 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):

The Boeing Company: Docket No. FAA–2019–0437; Product Identifier 2019–NM–074–AD.

(a) Comments Due Date

The FAA must receive comments by August 5, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks in the fuselage frame web at body station (STA) 1640. The FAA is issuing this AD to address cracks in the fuselage frame web at STA 1640, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For all airplanes except those identified in paragraph (g)(2) of this AD: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018.

Note 1 to paragraphs (g)(1) and (g)(2): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–53A0112, dated November 16, 2018, which is referred to in Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018.

(2) For airplanes on which Aviation Partners Boeing (APB) blended or scimitar winglets are installed in accordance with Supplemental Type Certificate (STC) ST01518SE: Except as specified by paragraph (h) of this AD, at the applicable times

specified in paragraph 1.E., ''Compliance'' of APB Alert Service Bulletin AP757–53–002, Revision 2, dated April 11, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018, uses the phrase ''the original issue date of Requirements Bulletin 757–53A0112 RB,'' this AD requires using ''the effective date of this AD,'' except where Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018, uses the phrase ''the original issue date of Requirements Bulletin 757–53A0112 RB'' in a note or flag note.

(2) Where Boeing Alert Requirements Bulletin 757–53A0112 RB, dated November 16, 2018, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(3) For purposes of determining compliance with the requirements of this AD: Where APB Alert Service Bulletin AP757–53–002, Revision 2, dated April 11, 2019, uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD,'' except where APB Alert Service Bulletin AP757–53–002, Revision 2, dated April 11, 2019, uses the phrase ''the original issue date of this Service Bulletin'' in a note or flag note.

(4) Where APB Alert Service Bulletin AP757–53–002, Revision 2, dated April 11, 2019, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO 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 certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as specified by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Peter Jarzomb, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5234; fax: 562–627–5210; email: *peter.jarzomb@faa.gov.*

(2) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(3) For Aviation Partners Boeing service information identified in this AD, contact Aviation Partners Boeing, 2811 South 102nd St., Suite 200, Seattle, WA 98168; phone: 206–830–7699; fax: 206–767–3355; email: *leng@aviationpartners.com;* internet: *http://www.aviationpartnersboeing.com.*

(4) 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.

Issued in Des Moines, Washington, on June 10, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–13047 Filed 6–20–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0406; Product Identifier 2019–NM–059–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model MD–90–30 airplanes. This proposed AD was prompted by reports indicating that certain center wing stringers and skins have been identified to potentially be susceptible to cracking. This proposed AD would require repetitive eddy current, low frequency (ETLF) inspections of the left and right side fastener holes for any crack; repetitive eddy current, high frequency (ETHF) inspections of the lower skin for any crack; and repair if any crack is found. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 5, 2019.

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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740 5600; telephone 562–797–1717; internet *https://www.myboeingfleet.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. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0406.

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–2019–0406; 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 is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:
David Truong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *david.truong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites 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–2019–0406; Product Identifier 2019–NM–059–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this NPRM.

Discussion

The FAA has received reports indicating that the fastener holes common to stringers (S) S–11 through S–22, and around the external bracket angle at S–18 and S–19 have been identified to potentially be susceptible to cracking on the Model MD–90 airplanes. This determination is based on Model MD–80 airplane service experience. The Model MD–80 and Model MD–90 wings share the same basic design and have similar stresses.

Operators of Model MD–80 airplanes have reported finding cracks in the center wing lower stringers, lower stringer end fittings, and lower forward and aft skins. The cracks in stringers occur at the inboard end where they are joined to the airplane centerline by end fittings. Cracks in the end fittings occur at the outboard end where they attach to stringers. The wing skin cracks occur underneath a cracked stringer. The cause of the cracks has been determined to be from fatigue. The Boeing Company has not received any reports of cracks on Model MD–90 airplanes; however, the similarities with the Model MD–80 wings require agency action. If not addressed, cracking of the center wing stringers and skins could result in the inability of the structure to sustain limit loads, and adversely affect the structural integrity of the airplane.

Other Relevant Rulemaking

The FAA issued AD 2016–07–28 (81 FR 21253, April 11, 2016) for all The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes, and Model MD–88 airplanes. That AD requires repetitive ETHF inspections for any cracking in the left and right side center wing lower skin, and corrective actions if necessary. That AD addresses cracks at S–15, S–16, or S–17, associated end fittings, and skins in the center wing fuel tank where the stringers meet the end fittings near Xcw=13 and Xcw=15. Such cracking could cause structural failure of the wings. Since that AD was issued, cracking has been found at fastener holes common to stringers S–11 through S–22, and around the external bracket angle at S–18 and S–19. These areas were not addressed in AD 2016–07–28 or Boeing Alert Service Bulletin MD80–57A244, dated March 3, 2016, which is the service information operators are required to follow to complete the actions required by AD 2016–07–28. Boeing is developing new service information for Model MD–80 airplanes to address these additional areas where cracking was found. The FAA will consider further rulemaking to address the identified unsafe condition for Model MD–80 airplanes once this service information is approved.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin MD90–57A031, dated March 19, 2019. This service information describes procedures for repetitive ETLF inspections of the left and right side fastener holes for any crack, repetitive ETHF inspections of the lower skin for any crack, and repair if any crack is found.

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

The FAA is proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0406.

Costs of Compliance

The FAA estimates that this proposed AD affects 43 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	30 work-hours × $85 per hour = $2,550 per inspection cycle.	$0	$2,550 per inspection cycle.	$109,650 per inspection cycle.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this proposed AD.

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.

The FAA is 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 and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA 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) Will not affect intrastate aviation in Alaska, and

(3) 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):

The Boeing Company: Docket No. FAA–2019–0406; Product Identifier 2019–NM–059–AD.

(a) Comments Due Date

The FAA must receive comments by August 5, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model MD–90–30 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports indicating that certain center wing stringers and skins have been identified to potentially be susceptible to cracking. The FAA is issuing this AD to address cracking of the center wing stringers and skins, which could result in the inability of the structure to sustain limit loads, and adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–57A031, dated March 19, 2019, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A031, dated March 19, 2019.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Service Bulletin MD90–57A031, dated March 19, 2019, uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Service Bulletin MD90–57A031, dated March 19, 2019, specifies contacting Boeing for repair instructions and doing the repair: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO 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 certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to *9-ANM-LAACO-AMOC-Requests@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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as specified by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact David Truong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *david.truong@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740 5600; telephone 562 797 1717; internet *https://www.myboeingfleet.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 June 4, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–13057 Filed 6–20–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0436; Product Identifier 2019–NM–014–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440), CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by reports of power control unit (PCU) rod end fractures due to pitting corrosion. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This proposed AD would also require detailed inspections of the elevator PCU rod ends and applicable corrective actions. This proposed AD would also prohibit using certain aircraft maintenance manual tasks. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 5, 2019.

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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.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–2019–0436; 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 is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Admin Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites 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–2019–0436; Product Identifier 2019–NM–014–AD’’ at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments the agency receives, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this NPRM.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–29, dated November 2, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ‘‘the MCAI’’), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440), CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> There have been several in-service reports of Power Control Unit (PCU) rod end fractures due to pitting corrosion. Investigation revealed that the PCU rod end spherical bearing could seize which, in turn, could induce a bending moment on the PCU output rod. This bending moment will eventually fracture the rod end. It was also noted that this failure mode typically occurs within the first 6000 hours of aeroplane operation.
>
> This condition, if not corrected, could lead to a disconnect between the PCU and the control surface, potential loss of the control surface function or inadequate flutter suppression.
>
> This [Canadian] AD mandates incorporation of revised tasks into the maintenance manuals for detailed inspections of the PCU rod ends in order to allow timely detection of pitting corrosion [and would prohibit using certain aircraft maintenance manual tasks].

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–2019–0436.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc., has issued the following service information.

Bombardier Service Bulletin 670BA–27–074, dated June 22, 2017. This service information describes procedures for detailed inspections for pitting and corrosion of the left and right rod ends of the elevator PCUs and to make sure that the spherical ball and inner race of the rod ends move freely, and applicable corrective actions. Corrective actions include installing a new PCU.

The following tasks describe operational checks of the elevator and rudder control systems, and a detailed inspection of the rudder PCU rod end spherical ball.

• Task 27–20–00–13, Operational Check of the Rudder Control System of Section 3—Systems and Powerplant Program, of the Bombardier Model CL–600–2B19 Series 100/200/440 Maintenance Planning Manual, Low Utilization Maintenance Program (MRLUMP–001), CSP A–054–009, Revision 37, dated July 10, 2018 (''MRLUMP–001, Revision 37'').

• Task 27–23–01–01, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, of MRLUMP–001, Revision 37.

• Task 27–31–00–05, Operational Check of the Elevator Control System, of MRLUMP–001, Revision 37.

The following tasks describe operational tests of the elevator and rudder control systems, and a detailed inspection of the rudder PCU rod end spherical ball.

• Task 27–20–00–13, Operational Test of the Rudder Control System, of Section 3—Systems and Powerplant Program, of the Bombardier Model CL–600–2B19 Series 100/200/440 Maintenance Planning Manual, Low Utilization Maintenance Program (MRLUMP–002), CSP A–054–060, Revision 37, dated July 10, 2018 (''MRLUMP–002, Revision 37'').

• Task 27–23–01–01, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, of MRLUMP–002, Revision 37.

• Task 27–31–00–05, Operational Test of the Elevator Control System, of MRLUMP–002, Revision 37.

The following tasks describe operational tests of the elevator and rudder PCUs, and a detailed inspection of the elevator PCU rod end spherical ball.

• Task 27–20–00–106, Operational Test of the Rudder PCUs (Duplicate CMR 27–20–00–106), of Section 3—Systems/Power Plant Tasks, of the Bombardier Model CL–600–2C10, CL–600–2D15, CL–600–2D24, Series 700/705/900 Maintenance Planning Manual, Low Utilization Maintenance Program (LUMP), CSP BC–116, Revision 15, dated May 25, 2017 (''LUMP, Revision 15'').

• Task 273000–207, Operational Test of the Elevator Power-Control Units (PCUs), of LUMP, Revision 15.

• Task 273000–215, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, of LUMP, Revision 15.

The following task describes an operational check of each elevator PCU.

• Task 273000–207, Operational Check of each Elevator PCU, of Subject 1–27, of Section 1, Systems and Powerplant Program, Volume 1 of Part 1, Maintenance Review Board Report, Revision 18, dated July 25, 2018, of the Bombardier Model CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 Series 700/705/900/1000 Maintenance Requirements Manual, CSP B–053.

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 the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA 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 revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations and to prohibit using certain aircraft maintenance manual tasks. Additionally, this proposed AD would require detailed inspections for pitting and corrosion of the left and right rod ends of the elevator PCUs and to make sure that the spherical ball and inner race of the rod ends move freely, and applicable corrective actions.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,008 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
9 work-hours × $85 per hour = $765	$0	$765	$771,120

* Table does not include estimated costs for revising the maintenance or inspection program.

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this proposed AD.

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.

The FAA is 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 and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA 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. Will not affect intrastate aviation in Alaska; and

3. 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):

Bombardier, Inc.: Docket No. FAA–2019–0436; Product Identifier 2019–NM–014–AD.

(a) Comments Due Date

The FAA must receive comments by August 5, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., airplanes, certificated in any category, as identified in paragraphs (c)(1) through (c)(4) of this AD.

(1) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 and subsequent.

(2) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, serial numbers 10002 through 10999 inclusive.

(3) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15990 inclusive.

(4) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19990 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of power control unit (PCU) rod end fractures due to pitting corrosion. The FAA is issuing this AD to address this condition, which, if not detected and corrected, could lead to a disconnect between the PCU and the control surface, resulting in potential loss of the control surface function or inadequate flutter suppression.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision for Certain Airplanes Operating Under the Low Utilization Maintenance Program (LUMP)

(1) For Model CL–600–2B19 airplanes operating under the LUMP: Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in paragraphs (g)(1)(i) through (g)(1)(vi) of this AD. The initial compliance time for accomplishing the actions is within 90 days after the effective date of this AD; or within the applicable interval specified in Section 3—Systems and Powerplant Program, of the Bombardier Model CL–600–2B19 Series 100/200/440 Maintenance Planning Manual, Low Utilization Maintenance Program (MRLUMP–001), CSP A–054–009, Revision 37, dated July 10, 2018 (''MRLUMP–001, Revision 37''); or Section 3—Systems and Powerplant Program, of the Bombardier Model CL–600–2B19 Series 100/200/440 Maintenance Planning Manual, Low Utilization Maintenance Program (MRLUMP–002), CSP A–054–060, Revision 37, dated July 10, 2018 (''MRLUMP–002, Revision 37''), after the effective date of this AD; whichever occurs later.

(i) Task 27–20–00–13, Operational Check of the Rudder Control System, of MRLUMP–001, Revision 37.

(ii) Task 27–23–01–01, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, of MRLUMP–001, Revision 37.

(iii) Task 27–31–00–05, Operational Check of the Elevator Control System, of MRLUMP–001, Revision 37.

(iv) Task 27–20–00–13, Operational Test of the Rudder Control System, of MRLUMP–002, Revision 37.

(v) Task 27–23–01–01, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, of MRLUMP–002, Revision 37.

(vi) Task 27–31–00–05, Operational Test of the Elevator Control System, of MRLUMP–002, Revision 37.

(2) For Model CL–600–2C10 airplanes having serial numbers 10004, 10040, 10043, 10052, 10100, 10164, 10183, 10187, 10204, 10206, 10217, 10247, 10289, 10332, and 10343 operating under the LUMP; and Model CL–600–2D15 and CL–600–2D24 airplanes having serial numbers 15158, 15278, and 15370 operating under the LUMP: Within 30 days from the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in paragraphs (g)(2)(i) through (g)(2)(iii) of this AD. The initial compliance time for accomplishing the actions is within 30 days after the effective date of this AD; or within the applicable interval specified in Section 3—Systems/Power Plant Tasks, of the Bombardier Model CL–600–2C10, CL–600–2D15, CL–600–2D24, Series 700/705/900 Maintenance Planning Manual, Low Utilization Maintenance Program (LUMP), CSP BC–116, Revision 15, dated May 25, 2017 (''LUMP, Revision 15''), after the effective date of this AD; whichever occurs later.

(i) Task 27–20–00–106, Operational Test of the Rudder PCUs (Duplicate CMR 27–20–00–106), of LUMP, Revision 15.

(ii) Task 273000–207, Operational Test of the Elevator Power-Control Units (PCUs), of LUMP, Revision 15.

(iii) Task 273000–215, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, of LUMP, Revision 15.

(h) Maintenance or Inspection Program Revision for Certain Airplanes That Are Not Operating Under the LUMP

For Model CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 airplanes that are not operating under the LUMP: Within 30 days from the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in task 273000–207, Operational Check of each Elevator PCU, of Subject 1–27, of Section 1, Systems and Powerplant Program, Volume 1 of Part 1, Maintenance Review Board Report, Revision 18, dated July 25, 2018, of the Bombardier Model CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 Series 700/705/900/1000 Maintenance Requirements Manual, CSP B–053, (''CSP B–053, Revision 18''). The initial compliance time for accomplishing the actions is within 30 days after the effective date of this AD; or within the applicable interval specified in CSP B–053, Revision 18, after the effective date of this AD; whichever occurs later.

(i) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) or (h) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (n)(1) of this AD.

(j) First Inspection of the Elevator PCU Rod End for Certain Airplanes

For Model CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 airplanes that are not operating under the LUMP, and that have accumulated less than 6,000 total flight hours as of the effective date of this AD: Within the compliance time indicated in figure 1 to paragraph (j) of this AD, perform a detailed inspection for pitting and corrosion of the left and right rod ends of the elevator PCUs and to make sure that the spherical ball and inner race of the rod ends move freely, and do all applicable corrective actions, in accordance with paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–074, dated June 22, 2017. Do all applicable corrective actions before further flight.

Figure 1 to paragraph (j) – *First Inspection Compliance Times*

Total Flight Hours as of the Effective Date of this AD	Compliance Time
Less than 800 total flight hours	After the airplane accumulates 1,000 total flight hours, but not to exceed 1,400 total flight hours
800 or more total flight hours and less than 6,000 total flight hours	Within 880 flight hours from the effective date of this AD

(k) Second Inspection of the Elevator PCU Rod End for Certain Airplanes

(1) For Model CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 airplanes that are not operating under the LUMP, and that have accumulated 2,600 total flight hours or less at the time of the inspection required by paragraph (j) of this AD: Before the accumulation of 3,400 total flight hours, perform an additional detailed inspection for pitting and corrosion of the left and right rod ends of the elevator PCUs and to make sure that the spherical ball and inner race of the rod ends move freely, and do all applicable corrective actions, in accordance with paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–074, dated June 22, 2017. Do all applicable corrective actions before further flight.

(2) For airplanes that have accumulated more than 2,600 total flight hours at the time of the inspection required by paragraph (j) of this AD: A second inspection is not applicable.

(l) No Inspection for Certain Airplanes

The requirements of paragraphs (j) and (k) are not applicable to airplanes that have accumulated 6,000 total flight hours or more as of the effective date of this AD.

(m) Service Information Prohibition for Certain Airplanes

For all Model CL–600–2B19 airplanes: After 30 days from the effective date of this AD, this AD prohibits the use of the aircraft maintenance manual (AMM) tasks specified in paragraphs (m)(1) through (m)(3) of this AD.

(1) Task 10–12–00–550–804, Short-Term Storage Return-to-Service Maintenance Checks, of the Bombardier CL–600–2B19 Series 100/200/440 AMM, CSP A–001, Revision 55, dated April 10, 2017, or earlier revisions of this task.

(2) Task 27–23–01–220–801, Detailed Inspection of the Rudder PCU Rod End Spherical Ball, of the Bombardier CL–600–2B19 Series 100/200/440 AMM, CSP A–001, Revision 54, dated October 10, 2016, or earlier revisions of this task.

(3) Task 27–33–01–220–801, Detailed Inspection of the Elevator PCU Rod End Spherical Ball, of the Bombardier CL–600–2B19 Series 100/200/440 AMM, CSP A–001, Revision 54, dated October 10, 2016, or earlier revisions of this task.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO 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 certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–29, dated November 2, 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–2019–0436.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Admin Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com*; internet *http://www.bombardier.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 June 12, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–13051 Filed 6–20–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 15

[Docket No. FDA–2019–N–2514]

Standards for Future Opioid Analgesic Approvals and Incentives for New Therapeutics To Treat Pain and Addiction; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA, Agency, we) is holding a public hearing on September 17, 2019, entitled ''Standards for Future Opioid Analgesic Approvals and Incentives for New Therapeutics to Treat Pain and Addiction.'' The Agency today is issuing a draft guidance on the application of FDA's existing benefit-risk assessment framework to applications for approval of opioid analgesic drugs. This public hearing is intended to receive stakeholder input on the approval process for new opioids and how FDA might best consider the existing armamentarium of therapies, among other factors, in reviewing applications for new opioids to treat pain. FDA also seeks input on potential new preapproval incentives aimed at fostering the development of new therapeutics to treat pain, as well as new treatments for addiction.

DATES: The public hearing will be held on September 17, 2019, from 9 a.m. to 5 p.m. The public hearing may be extended or may end early depending on the level of public participation. Persons can attend the event in person or via webcast. In-person attendees can also request to give a formal presentation or to speak during the open public comment portion of the hearing. Section II provides attendance and registration information. Electronic or written comments will be accepted after the public hearing until November 18, 2019.

ADDRESSES: The public hearing will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503 B/C), Silver Spring, MD 20993–0002. Entrance for public hearing participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

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 November 18, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 18, 2019. 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. You may submit comments 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–2019–N–2514 for ''Standards for Future Opioid Analgesic Approvals and Incentives for New Therapeutics to Treat Pain and Addiction; Public Hearing.'' 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.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the received electronic and written/paper comments, 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:

Nicole Zelenak, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6249, Silver Spring, MD 20993, 301–796–9030; *nicole.zelenak@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (or SUPPORT for Patients and Communities Act) [1] was signed into law on October 24, 2018. One provision of this law requires FDA to hold not less than one public meeting to address the challenges and barriers of developing non-addictive medical products intended to treat acute or chronic pain or addiction, which may include the manner in which the risks of abuse or misuse of a controlled substance may be incorporated into the benefit-risk assessment for new drug approvals under section 505(d) and (e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(d) and (e)).[2]

All opioids approved to treat pain are controlled substances. They are a crucial component of the armamentarium available for treatment of pain, but they carry serious risks of addiction, overdose, and death. Potent novel analgesics that do not carry these risks could significantly reduce or even obviate the need for opioid analgesics, but development of such drugs has remained elusive. FDA is optimistic that the enormous societal need, and the efforts of all stakeholders to meet that need, will drive scientific advances in the development of novel, safer analgesics. In the meantime, however, opioid analgesics are likely to remain a necessary part of medical practice despite their risks. FDA's goal is to regulate opioid analgesics in such a way as to reduce their serious risks to the greatest extent possible, while ensuring their continued availability to the patients who need them.

Under our existing authorities, FDA determines whether each new drug application—including each new opioid drug application—meets applicable standards for safety and effectiveness. In applying these standards, FDA evaluates whether the benefits of the drug outweigh its risks. Benefit-risk assessment is the foundation of FDA's regulatory review of human drugs and biologics. It reflects the Agency's consideration of the evidence, identification of uncertainties, and the reasoning the Agency uses to make specific regulatory decisions, including product approvals. Additionally, the benefit-risk assessment for a particular medical product serves as a tool for communicating the Agency's findings about the product.

FDA today issued a draft guidance on the application of FDA's benefit-risk assessment framework to applications for approval of opioid analgesic drugs entitled ''Opioid Analgesic Drugs: Considerations for Benefit-Risk Assessment Framework—Guidance for Industry.'' This draft guidance discusses the Agency's application of the existing benefit-risk assessment framework, which takes into account not only the benefits and risks of a proposed new opioid to patients when used as prescribed, but also the effectiveness and safety of the proposed product relative to currently available analgesics as well as the public health impact of anticipated inappropriate use. Comments on that draft guidance may be submitted to the docket number for the draft guidance, FDA–2019–D–1536. Comments are requested to be submitted by [enter DATE that is 60 days after issuance of the draft guidance] to ensure that your comments will be considered before finalization of the guidance.

The existing benefit-risk assessment process has been, and continues to be, a comprehensive and effective mechanism for evaluating all new drug approvals, including new opioid approvals. Given the current opioid crisis, however, it is critical that FDA explore every possible option for effectively responding to opioid misuse and abuse. To this end, the Agency is announcing this public hearing to gather input on additional factors the Agency could consider during the approval process for new opioid therapies. For example, should a new opioid analgesic be required to demonstrate an advantage over existing drugs to justify its addition to the market? If so, what new authorities would FDA need to impose such a requirement? What other new authorities might FDA need to fully assess candidate opioid analgesics given their serious risks and the societal impact of opioids overall?

As noted above, potent novel analgesics that do not carry the serious risks of existing opioids could greatly reduce or even eliminate the need for opioid analgesics in the armamentarium of drugs available to treat serious pain. In addition, there is an urgent need for new and better treatment options for opioid use disorder. Accordingly, FDA is also considering whether new preapproval incentives (in addition to existing incentives, such as breakthrough designation) are needed to better support and encourage development of all therapeutics (opioid or non-opioid drugs, biological products, or devices) intended to treat pain or addiction. Such new incentives could be tailored to the development of novel analgesics and could include, among other things, an FDA commitment to hold a series of meetings and provide written feedback at various stages of product development, with a firm seeking approval of a product with the potential to offer an advantage relative to existing products indicated to treat pain or addiction. We invite comment on potential new incentives as discussed below.

II. Topics for Discussion at the Public Hearing

FDA is seeking feedback from a broad group of stakeholders, both private and public, who are working on the challenges of improving pain management and addressing the opioid crisis. Some questions for consideration at the public hearing are provided below. We welcome input on other relevant issues as well.

1. Does the current statutory and regulatory framework, including the benefit-risk assessment described in the recently issued draft guidance, allow for an adequate evaluation of applications for new opioid analgesics, or are new authorities required? If new authorities are required, please expand on what should be added to the existing statutory and regulatory paradigm.

2. Should sponsors of new opioid analgesics be required to demonstrate some comparative advantage relative to existing analgesics? If so, what new authorities would be necessary to impose a comparative advantage requirement for opioid analgesics?

3. If so, how should that comparative advantage be defined?

a. Can it be quantified?

b. Should the assessment encompass any potential comparative advantage, including, *e.g.,* safety advantages that reduce the prevalence or consequences of abuse or misuse by non-patient populations?

c. For any given application, to which existing products should the proposed new product be required to demonstrate comparative advantage? Any other opioid approved for the same analgesic indication(s) for which approval is sought? What are the implications if the new product only offers a comparative advantage over some of the other opioid products approved for the same indication(s)?

4. If a showing of comparative advantage were made a requirement for approval of new opioid analgesics, could a proposed product meet this standard even if the product also carried additional or novel risks compared to existing products?

5. If a showing of comparative advantage were made a requirement for approval of new opioid analgesics, should there be any exceptions, for

[1] Public Law 115–271.

[2] *Id.*, section 3001(a).

example with regard to medically necessary drugs in shortage?

6. If a showing of comparative advantage were made a requirement for approval of new opioid analgesics, what would be the impact on development of such products?

7. If a showing of comparative advantage were made a requirement for approval of new opioid analgesics, what would be the impact on patients, providers, and on the public health generally? Please consider that the existing opioid market consists largely of relatively inexpensive generic drugs.

8. In what other ways should FDA be considering the existing armamentarium of therapies to treat pain when reviewing an application for the approval of a new opioid analgesic? To what extent would new authorities be required?

9. Please comment on whether new pre-approval incentives are needed to better support and encourage development of therapeutics intended to treat pain or addiction. If so, what new incentives would be most effective, and what new authorities might FDA need to offer them? If the new incentives are offered through a designation process (analogous to breakthrough designation), what should be the criteria for designation?

Registration and Requests for Oral Presentations: The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating. Attendees can register at *https://www.eventbrite.com/e/fda-standards-for-future-opioid-therapy-approvals-part-15-meeting-tickets-60645674846*. Attendees have the following options:

- Presenter—Presenters will give a timed presentation followed by a timed question and answer period by the panel. The presentation time allotted will be approximately 10 minutes, but this is subject to change based on the number of presenters who register. Presenters can opt to use a presentation slide deck. Presenters must register no later than August 9, 2019. Slide decks are due to *CDER-PublicMeeting@fda.hhs.gov* in PDF or PowerPoint format no later than August 23, 2019. If presenters choose to not use a slide deck, they are requested to submit a single slide with name of presentation and contact information by September 6, 2019.
- Open Public Commenter—Open public commenters will provide a timed oral testimony. The comment time allotted will be approximately 3 minutes, but this is subject to change based on the number or commenters who register. Open public commenters shall not have presentation materials or a question and answer period with the panel. Commenters must register no later than September 10, 2019.
- In-Person Attendee—In-person attendees will attend the meeting at the FDA White Oak facility.
- Webcast Attendee—For those unable to attend in person, FDA will provide a live webcast of the hearing. Webcast attendees will be provided with a link via email to use to view the streaming webcast of the public hearing.

Attendees shall register for only one person. Those without internet or email access can register and/or request to participate as an open public hearing speaker or a formal presenter by contacting Nicole Zelenak by the above dates (see **FOR FURTHER INFORMATION CONTACT**).

FDA will try to accommodate all persons who wish to register. Registration may close early if slots are full. Individuals and organizations with common interests may consolidate or coordinate their presentations and request time for a joint presentation. Individual organizations are limited to a single presentation slot. FDA will notify registered Presenters of their scheduled presentation times no later than 1 week prior to the meeting. The time allotted for each presentation will depend on the number of individuals who wish to speak. Persons registered to present are encouraged to arrive at the hearing room early and check in at the onsite registration table to confirm their designated presentation time. Actual presentation times, however, may vary based on how the meeting progresses in real time. An agenda for the hearing and any other background materials will be made available 5 days before the hearing at *https://www.fda.gov/drugs/development-approval-process-drugs/standards-future-opioid-therapy-approvals-09172019-09172019*.

If you need special accommodations because of a disability, please contact Nicole Zelenak (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the hearing.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *https://www.regulations.gov*. It may be viewed at the Dockets Management Staff (see *Comments*). A transcript will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's website at *https://www.fda.gov*.

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with 21 CFR part 15. The hearing will be conducted by a presiding officer, who will be accompanied by FDA senior management from the Office of the Commissioner, the Center for Drug Evaluation and Research, Center for Biologics Evaluation and Research, and the Center for Devices and Radiological Health. Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members can pose questions; they can question any person during or at the conclusion of each presentation. Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR part 10, subpart C). Under § 10.205, representatives of the media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. Persons attending FDA's public hearings are advised that FDA is not responsible for providing access to electrical outlets. The hearing will be transcribed as stipulated in § 15.30(b) (see *Transcripts*). To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

Dated: June 17, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–13219 Filed 6–20–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–101828–19]

RIN 1545–BP15

Guidance Under Section 958 (Rules for Determining Stock Ownership) and Section 951A (Global Intangible Low-Taxed Income)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the treatment of domestic partnerships for purposes of determining amounts included in the gross income of their partners with respect to foreign corporations. In addition, this document contains proposed regulations under the global intangible low-taxed income provisions regarding gross income that is subject to a high rate of foreign tax. The proposed regulations would affect United States persons that own stock of foreign corporations through domestic partnerships and United States shareholders of foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 19, 2019.

ADDRESSES: Send submissions to: Internal Revenue Service, CC:PA:LPD:PR (REG–101828–19), Room 5203, Post Office 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–101828–19), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20024, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–101828–19).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under §§ 1.951–1, 1.956–1, and 1.958–1, Joshua P. Roffenbender at (202) 317–6934; concerning the proposed regulations under §§ 1.951A–0, 1.951A–2, 1.951A–7, and 1.954–1, Jorge M. Oben at (202) 317–6934; concerning the proposed regulations under § 1.1502–51, Katherine H. Zhang at (202) 317–6848 or Kevin M. Jacobs at (202) 317–5332; concerning submissions of comments or requests for a public hearing, Regina Johnson at (202) 317–6901 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. Subpart F Before Enactment of Section 951A

The Revenue Act of 1962 (the ''1962 Act''), Public Law 87–834, sec. 12, 76 Stat. at 1006, enacted subpart F of part III, subchapter N, chapter 1 of the 1954 Internal Revenue Code (''subpart F''), as amended. See sections 951 through 965 of the Internal Revenue Code (''Code'').[1] Congress created the subpart F regime to limit the use of corporations organized in low-tax jurisdictions for the purposes of obtaining indefinite deferral of U.S. tax on certain earnings—generally earnings that are passive or highly mobile—that would otherwise be subject to Federal income tax. H.R. Rep. No. 1447 at 57–58 (1962); S. Rep. No. 1881 at 78–80 (1962). Subpart F generally requires a United States shareholder (as defined in section 951(b)) (''U.S. shareholder'') to include in its gross income (''subpart F inclusion'') its pro rata share of subpart F income (as defined in section 952) earned by a controlled foreign corporation (''CFC'') (as defined in section 957(a)) and its pro rata share of earnings and profits (''E&P'') invested in certain United States property by the CFC. See section 951(a)(1)(A) and (B) and section 956(a). For purposes of both section 951(a)(1)(A) and (B), the determination of a U.S. shareholder's pro rata share of any amount with respect to a CFC is determined by reference to the stock of the CFC that the shareholder owns (within the meaning of section 958(a)). See sections 951(a)(1) and (2) and 956(a).

Section 957(a) defines a CFC as any foreign corporation if U.S. shareholders own (within the meaning of section 958(a)), or are considered as owning by applying the ownership rules of section 958(b), more than 50 percent of the total combined voting power or value of stock of such corporation on any day during the taxable year of such foreign corporation. Section 951(b) defines a U.S. shareholder of a foreign corporation as a United States person (''U.S. person'') that owns (within the meaning of section 958(a)), or is considered as owning by applying the ownership rules of section 958(b), at least 10 percent of the total combined voting power or value of stock of the foreign corporation. Section 957(c) generally defines a U.S. person by reference to section 7701(a)(30), which defines a U.S. person as a citizen or resident of the United States, a domestic partnership, a domestic corporation, and certain estates and trusts.

Stock owned within the meaning of section 958(a) is stock owned directly and stock owned indirectly under section 958(a)(2). Section 958(a)(2) provides that stock owned, directly or indirectly, by or for a foreign corporation, foreign partnership, foreign trust, or foreign estate is considered to be owned proportionately by its shareholders, partners, or beneficiaries. Section 958(a)(2) does not provide rules addressing stock owned by domestic entities, including domestic partnerships.

Section 958(b) provides in relevant part that the constructive ownership rules of section 318(a) apply, with certain modifications, for purposes of determining whether any U.S. person is a U.S. shareholder or any foreign corporation is a CFC. These rules apply to treat a person as owning the stock owned, directly or indirectly, by another person, generally without regard to whether the person to or from which stock is attributed is domestic or foreign. In particular, section 318(a)(2)(A) provides in relevant part that stock owned, directly or indirectly, by or for a partnership is considered as owned proportionately by its partners, and section 318(a)(3)(A) provides that stock owned, directly or indirectly, by or for a partner is considered as owned by the partnership. Further, in determining stock treated as owned by partners of a partnership under section 318(a)(2)(A), section 958(b)(2) provides in relevant part that a partnership that owns, directly or indirectly, more than 50 percent of the voting power of a corporation is considered as owning all the stock entitled to vote. However, a U.S. person that is a U.S. shareholder of a CFC by reason of constructive ownership under section 958(b), but that does not own stock in the CFC within the meaning of section 958(a), does not have a subpart F inclusion with respect to the CFC.

II. Treatment of Domestic Partnerships as Entities or Aggregates of Their Partners, in General

For purposes of applying a particular provision of the Code, a partnership may be treated as either an entity separate from its partners or as an aggregate of its partners. Under an aggregate approach, the partners of a partnership, and not the partnership, are treated as owning the partnership's assets and conducting the partnership's operations. Under an entity approach, the partnership is respected as separate and distinct from its partners, and therefore the partnership, and not the partners, is treated as owning the partnership's assets and conducting the partnership's operations. Based upon the authority of subchapter K and the policies underlying a particular provision of the Code, a partnership is treated as an aggregate of its partners or as an entity separate from its partners, depending on which characterization is more appropriate to carry out the scope and purpose of the Code provision. See H.R. Rep. No. 83–2543, at 59 (1954) (Conf. Rep.) (''Both the House provisions and the Senate amendment provide for the use of the 'entity' approach in the treatment of transactions between a partner and a partnership . . . . No inference is

[1] Except as otherwise stated, all section references in this preamble are to the Internal Revenue Code.

intended, however, that a partnership is to be considered as a separate entity for the purpose of applying other provisions of the internal revenue laws if the concept of the partnership as a collection of individuals is more appropriate for such provisions.''). See also *Casel* v. *Commissioner,* 79 T.C. 424, 433 (1982) (''When the 1954 Code was adopted by Congress, the conference report . . . clearly stated that whether an aggregate or entity theory of partnerships should be applied to a particular Code section depends upon which theory is more appropriate to such section.''); *Holiday Village Shopping Center* v. *United States,* 5 Cl. Ct. 566, 570 (1984), *aff'd* 773 F.2d 276 (Fed. Cir. 1985) (''[T]he proper inquiry is not whether a partnership is an entity or an aggregate for purposes of applying the internal revenue laws generally, but rather which is the more appropriate and more consistent with Congressional intent with respect to the operation of the particular provision of the Internal Revenue Code at issue.''); § 1.701–2(e)(1) (''The Commissioner can treat a partnership as an aggregate of its partners in whole or in part as appropriate to carry out the purpose of any provision of the Internal Revenue Code . . . .'').

Consistent with this authority under subchapter K, the Treasury Department and the IRS have adopted an aggregate approach to partnerships to carry out the purpose of various provisions, including international provisions, of the Code. For example, regulations under section 871 treat domestic and foreign partnerships as aggregates of their partners in applying the 10 percent shareholder test of section 871(h)(3) to determine whether interest paid to a partnership would be considered portfolio interest under section 871(h)(2). See § 1.871–14(g)(3)(i). An aggregate approach to partnerships was also adopted in regulations issued under section 367(a) to address the transfer of property by a domestic or foreign partnership to a foreign corporation in an exchange described in section 367(a)(1). See § 1.367(a)–1T(c)(3)(i)(A). Similarly, the Treasury Department and the IRS adopted an aggregate approach to foreign partnerships for purposes of applying the regulations under section 367(b). See § 1.367(b)–2(k); see also §§ 1.367(e)–1(b)(2) (treating stock and securities of a distributing corporation owned by or for a partnership (domestic or foreign) as owned proportionately by its partners) and 1.861–9(e)(2) (requiring certain corporate partners to apportion interest expense, including the partner's distributive share of partnership interest expense, by reference to the partner's assets).

III. Treatment of Domestic Partnerships as Entities or Aggregates for Purposes of Subpart F Before the Tax Cuts and Jobs Act

Since the enactment of subpart F, domestic partnerships have generally been treated as entities, rather than as aggregates of their partners, for purposes of determining whether U.S. shareholders own more than 50 percent of the stock (by voting power or value) of a foreign corporation and thus whether a foreign corporation is a CFC. See § 1.701–2(f), *Example 3* (concluding that a foreign corporation wholly owned by a domestic partnership is a CFC for purposes of applying the look-through rules of section 904(d)(3)). In addition, domestic partnerships have generally been treated as entities for purposes of treating a domestic partnership as the U.S. shareholder that has the subpart F inclusion with respect to such foreign corporation. But cf. §§ 1.951–1(h) and 1.965–1(e) (treating certain domestic partnerships owned by CFCs as foreign partnerships for purposes of determining the U.S. shareholder that has the subpart F inclusion with respect to CFCs owned by such domestic partnerships). If a domestic partnership is treated as the U.S. shareholder with the subpart F inclusion, then each partner of the partnership has a distributive share of the partnership's subpart F inclusion, regardless of whether the partner itself is a U.S. shareholder. See section 702.

This entity treatment is consistent with the inclusion of a domestic partnership in the definition of a U.S. person in section 7701(a)(30), which term is used in the definition of U.S. shareholder by reference to section 957(c). It is also consistent with the legislative history to section 951, which describes domestic partnerships as being included within the definition of a U.S. person and, therefore, a U.S. shareholder. See, for example, S. Rep. No. 1881 at 80 n.1 (1962) (''U.S. shareholders are defined in the bill as 'U.S. persons' with 10-percent stockholding. U.S. persons, in general, are U.S. citizens and residents and domestic corporations, partnerships and estates or trusts.''). Furthermore, entity treatment is consistent with sections 958(b) and 318(a)(3)(A), which treat a partnership (including a domestic partnership) as owning the stock owned by its partners for purposes of determining whether the foreign corporation is owned more than 50 percent by U.S. shareholders.

In contrast to the historical treatment of domestic partnerships as entities for purposes of subpart F, foreign partnerships are generally treated as aggregates of their partners for purposes of determining stock ownership under section 958(a). See section 958(a)(2). Accordingly, whether a foreign corporation owned by a foreign partnership is a CFC is determined based on the proportionate amount of stock owned by domestic partners of the partnership and, if the foreign corporation is a CFC, partners that are U.S. shareholders have the subpart F inclusion with respect to the CFC.

IV. Section 951A

A. In general

The Tax Cuts and Jobs Act, Public Law 115–97 (the ''Act'') established a participation exemption system for the taxation of certain foreign income by allowing a domestic corporation a 100 percent dividends received deduction for the foreign-source portion of a dividend received from a specified 10 percent-owned foreign corporation. See section 14101(a) of the Act and section 245A. The Act's legislative history expresses concern that the new participation exemption could heighten the incentive to shift profits to low-tax foreign jurisdictions or tax havens absent base erosion protections. See S. Comm. on the Budget, Reconciliation Recommendations Pursuant to H. Con. Res. 71, S. Print No. 115–20, at 370 (2017) (''Senate Explanation''). For example, without appropriate limits, domestic corporations might be incentivized to shift income to low-taxed foreign affiliates, and the income could potentially be distributed back to domestic corporate shareholders without the imposition of any U.S. tax. See id. To prevent base erosion, the Act retained the subpart F regime and enacted section 951A, which applies to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

Section 951A requires a U.S. shareholder of any CFC for any taxable year to include in gross income the shareholder's global intangible low-taxed income (''GILTI inclusion'') for such taxable year in a manner similar to a subpart F inclusion for many purposes of the Code. See sections 951A(a) and (f)(1)(A); H.R. Rep. No. 115–466, at 641 (2017) (Conf. Rep.) (''[A] U.S. shareholder of any CFC must include in gross income for a taxable year its [GILTI] in a manner generally similar to inclusions of subpart F income.'').

Similar to a subpart F inclusion, the determination of a U.S. shareholder's GILTI inclusion begins with the calculation of relevant items—such as tested income, tested loss, and qualified business asset investment—of each CFC owned by the shareholder (''tested items''). See section 951A(c)(2) and (d) and §§ 1.951A–2 through –4. A U.S. shareholder then determines its pro rata share of each of these CFC-level tested items in a manner similar to a U.S. shareholder's pro rata share of subpart F income under section 951(a)(2). See section 951A(e)(1) and § 1.951A–1(d).

In contrast to a subpart F inclusion, however, a U.S. shareholder's pro rata shares of the tested items of a CFC are not amounts included in gross income, but rather are amounts taken into account by the U.S. shareholder in determining the amount of its GILTI inclusion for the taxable year. Section 951A(b) and § 1.951A–1(c). Thus, a U.S. shareholder does not compute a separate GILTI inclusion amount under section 951A(a) with respect to each CFC for a taxable year, but rather computes a single GILTI inclusion amount by reference to all of its CFCs.

Section 951A itself does not contain specific rules regarding the treatment of domestic partnerships and their partners for purposes of GILTI. However, proposed regulations under section 951A that were published in the **Federal Register** on October 10, 2018, (REG–104390–18, 83 FR 51072) (''GILTI proposed regulations'') reflect a hybrid approach that treats a domestic partnership that is a U.S. shareholder with respect to a CFC (''U.S. shareholder partnership'') as an entity with respect to some partners but as an aggregate of its partners with respect to others. Under the hybrid approach, with respect to partners that are not U.S. shareholders of a CFC owned by a domestic partnership, a U.S. shareholder partnership calculates a GILTI inclusion amount and its partners have a distributive share of such amount (if any). See proposed § 1.951A–5(b)(1). However, with respect to partners that are themselves U.S. shareholders of a CFC owned by a domestic partnership (''U.S. shareholder partners''), the partnership is treated in the same manner as a foreign partnership, with the result that the U.S. shareholder partners are treated as proportionately owning, within the meaning of section 958(a), stock owned by the domestic partnership for purposes of determining their own GILTI inclusion amounts. See proposed § 1.951A–5(c). In the preamble to the GILTI proposed regulations, the Treasury Department and the IRS rejected a pure entity approach to section 951A, because treating a domestic partnership as the section 958(a) owner of stock in all cases would frustrate the GILTI framework by creating unintended planning opportunities for well advised taxpayers and traps for the unwary. However, the Treasury Department and the IRS also did not adopt a pure aggregate approach to domestic partnerships for GILTI because such an approach would be inconsistent with the existing treatment of domestic partnerships as entities for purposes of subpart F.

The Treasury Department and the IRS received many comments in response to the hybrid approach of the GILTI proposed regulations. The comments generally advised against adopting the hybrid approach due primarily to concerns with complexity and administrability arising from the treatment of a partnership as an entity with respect to some partners but as an aggregate with respect to other partners. The comments also generally advised against adopting a pure entity approach because such an approach would result in different treatment for similarly situated taxpayers depending on whether a U.S. shareholder owned stock of a foreign corporation through a domestic partnership or a foreign partnership, which is treated as an aggregate of its partners for purposes of determining CFC status and section 958(a) ownership. The majority of comments on this issue recommended at least some form of aggregate approach for domestic partnerships for purposes of the GILTI regime; some of these comments suggested that an aggregate approach is supported by analogy to other situations where regulations apply an aggregate approach to partnerships. See, for example, §§ 1.954–1(g)(1) and 1.871–14(g)(3)(i).

In response to these comments, the Treasury Department and the IRS are issuing final regulations under section 951A in the Rules and Regulations section of this issue of the **Federal Register** (''GILTI final regulations'') that treat stock owned by a domestic partnership as owned within the meaning of section 958(a) by its partners for purposes of determining a partner's GILTI inclusion amount under section 951A. The Treasury Department and the IRS concluded that applying an aggregate approach for purposes of determining a partner's GILTI inclusion amount under section 951A is necessary to ensure that, consistent with the purpose and operation of section 951A, a single GILTI inclusion amount is determined for each taxpayer based on its economic interests in all of its CFCs. The GILTI final regulations apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

Some comments also recommended adopting an aggregate approach for purposes of section 951, especially if the GILTI final regulations adopt an aggregate approach. These comments generally asserted that there is insufficient policy justification for treating domestic partnerships differently than foreign partnerships for purposes of U.S. shareholder and CFC determinations because the choice of law under which a partnership is organized should be irrelevant. In this regard, these comments criticized entity treatment of domestic partnerships because it results in each partner including in income its distributive share of a domestic partnership's subpart F inclusion with respect to a CFC, even if that partner is not a U.S. shareholder itself and thus would not have had a subpart F inclusion with respect to such CFC if the domestic partnership were instead foreign.

B. High-Tax Gross Tested Income

Section 951A(c)(2)(A)(i) provides that the gross tested income of a CFC for a taxable year is all the gross income of the CFC for the year, determined without regard to certain items. See also § 1.951A–2(c)(1). In particular, section 951A(c)(2)(A)(i)(III) excludes from gross tested income any gross income excluded from foreign base company income (as defined in section 954) (''FBCI'') or insurance income (as defined in section 953) of a CFC by reason of the exception under section 954(b)(4) (the ''GILTI high tax exclusion'').

The GILTI proposed regulations clarified that the GILTI high tax exclusion applies only to income that is excluded from FBCI and insurance income solely by reason of an election made to exclude the income under the high tax exception of section 954(b)(4) and § 1.954–1(d)(5). See proposed § 1.951A–2(c)(1)(iii).

Numerous comments requested that the scope of the GILTI high tax exclusion be expanded in the final regulations. These comments asserted that the legislative history to section 951A indicates that Congress intended that income of a CFC should be taxed as GILTI only if it is subject to a low rate of foreign tax, regardless of whether the income is active or passive. Comments also suggested that the GILTI high tax exclusion does not require that income be excluded ''solely'' by reason of section 954(b)(4). The comments argued that the GILTI high tax exclusion could be interpreted to exclude any item of income that would be FBCI or insurance income, but for another exception to FBCI (for instance, the active financing exception under section 954(h) and the active insurance exception under section 954(i)). Of the comments recommending an expansion of the GILTI high tax exclusion, some recommended that the GILTI high tax exclusion apply to income taxed at a rate above 13.125 percent, while others recommended that the GILTI high tax exclusion apply to income taxed at a rate above 90 percent of the maximum rate of tax specified in section 11, or 18.9 percent. The comments recommended that the GILTI high tax exclusion be applied either on a CFC-by-CFC basis or an item-by-item basis.

Alternatively, comments recommended that the scope of the GILTI high tax exclusion be expanded under section 951A(f) by treating, on an elective basis, a GILTI inclusion as a subpart F inclusion that is potentially excludible from FBCI or insurance income under section 954(b)(4), or by modifying the GILTI high tax exclusion to exclude any item of income subject to a sufficiently high effective foreign tax rate such that it would be excludible under section 954(b)(4) if it were FBCI or insurance income. Other comments recommended the creation of a rebuttable presumption that all income of a CFC is subpart F income, regardless of whether such income is of a character included in FBCI or insurance income, and therefore, if the taxpayer chose not to rebut the presumption, the income would be excluded from gross tested income either because it is included in subpart F income (and thus excluded from gross tested income by reason of the subpart F exclusion under section 951A(c)(2)(A)(i)(II)) or because the income is excluded from subpart F income by reason of section 954(b)(4) (and thus excluded from gross tested income by reason of the GILTI high tax exclusion).

The GILTI final regulations adopt the GILTI high tax exclusion of the proposed regulations without change.

Explanation of Provisions

I. Partnerships

A. Adoption of Aggregate Treatment for Purposes of Section 951

After considering the alternatives, the Treasury Department and the IRS have concluded that, to be consistent with the treatment of domestic partnerships under section 951A, a domestic partnership should also generally be treated as an aggregate of its partners in determining stock owned under section 958(a) for purposes of section 951. Therefore, the proposed regulations provide that, for purposes of sections 951 and 951A, and for purposes of any provision that applies by reference to sections 951 and 951A (for example, sections 959, 960, and 961), a domestic partnership is not treated as owning stock of a foreign corporation within the meaning of section 958(a). See proposed § 1.958–1(d)(1). Furthermore, the proposed regulations provide that, for purposes of determining the stock owned under section 958(a) by a partner of a domestic partnership, a domestic partnership is treated in the same manner as a foreign partnership. See id. This rule does not apply, however, for purposes of determining whether any U.S. person is a U.S. shareholder, whether a U.S. shareholder is a controlling domestic shareholder (as defined in § 1.964–1(c)(5)), or whether a foreign corporation is a CFC. See proposed § 1.958–1(d)(2). Accordingly, under the proposed regulations, a domestic partnership that owns a foreign corporation is treated as an entity for purposes of determining whether the partnership and its partners are U.S. shareholders, whether the partnership is a controlling domestic shareholder, and whether the foreign corporation is a CFC, but the partnership is treated as an aggregate of its partners for purposes of determining whether, and to what extent, its partners have inclusions under sections 951 and 951A and for purposes of any other provision that applies by reference to sections 951 and 951A.

For purposes of subpart F, a foreign partnership is explicitly treated as an aggregate of its partners, and rules regarding this aggregate treatment are relatively well-developed and understood. Therefore, rather than developing a new standard for the treatment of a domestic partnership as an aggregate of its partners, the Treasury Department and the IRS have determined that it would be simpler and more administrable to adopt, by reference, the rules related to foreign partnerships for this limited purpose. The GILTI final regulations adopt the same approach for purposes of section 951A. See § 1.951A–1(e). As a result, under the proposed regulations, stock owned directly or indirectly by or for a domestic partnership will generally be treated as owned proportionately by its partners for purposes of sections 951(a) and 951A and any provision that applies by reference to sections 951 and 951A.

The Treasury Department and the IRS have determined that, as a result of the enactment of the GILTI regime, it is no longer appropriate to treat domestic partnerships as entities that are separate from their owners for purposes of determining whether, and to what extent, a partner has an inclusion under section 951. Congress intended for the subpart F and GILTI regimes to work in tandem by providing that both regimes apply to U.S. shareholders of CFCs, that GILTI is included in a U.S. shareholder's gross income in a manner similar to a subpart F inclusion for many purposes of the Code, and that gross income taken into account in determining the subpart F income of a CFC is not taken into account in determining the tested income of such CFC (and, therefore, in determining the GILTI inclusion amount of a U.S. shareholder of such CFC). See section 951A(c)(2)(i)(II) and 951A(f); see also Senate Explanation at 373 (''Although GILTI inclusions do not constitute subpart F income, GILTI inclusions are generally treated similarly to subpart F inclusions.''). As a result, treating domestic partnerships inconsistently for subpart F and GILTI purposes would be inconsistent with legislative intent.

Furthermore, inconsistent approaches to the treatment of domestic partnerships for purposes of subpart F and GILTI would introduce substantial complexity and uncertainty, particularly with respect to foreign tax credits, previously taxed earnings and profits (''PTEP'') and related basis rules, or any other provision the application of which turns on the owner of stock under section 958(a) and, thus, the U.S. person that has the relevant inclusion. For example, if a domestic partnership were treated as an aggregate of its partners for purposes of GILTI but as an entity for purposes of subpart F, regulations would need to address separately the maintenance of PTEP accounts at the domestic partnership level for subpart F and the maintenance of PTEP accounts at the partner level for GILTI. Similarly, regulations would need to provide separate rules for basis adjustments under section 961 with respect to a domestic partnership and its CFCs depending on whether an amount was included under section 951 or section 951A. The increased complexity of regulations resulting from treating domestic partnerships differently for purposes of subpart F and GILTI would, in turn, increase the burden on taxpayers to comply with, and on the IRS to administer, such regulations. Conversely, aggregate treatment of domestic partnerships in determining section 958(a) stock ownership for purposes of determining a partner's inclusion under both the GILTI and subpart F regimes will result in substantial simplification, as compared to disparate treatment, and will harmonize the two regimes.

The Treasury Department and the IRS also considered extending aggregate treatment for all purposes of subpart F, including for purposes of determining whether a foreign corporation is a CFC under section 957(a). However, the Treasury Department and the IRS determined that an approach that treats a domestic partnership as an aggregate for purposes of determining CFC status is inconsistent with relevant statutory provisions. As discussed in part III of the Background section of this preamble, the Code clearly contemplates that a domestic partnership can be a U.S. shareholder under section 951(b), including by attribution from its partners. See sections 7701(a)(30), 957(c), 951(b), 958(b), 318(a)(2)(A), and 318(a)(3)(A). An approach that treats a domestic partnership as an aggregate for purposes of determining CFC status would not give effect to the statutory treatment of a domestic partnership as a U.S. shareholder.

By contrast, neither section 958(a) nor any other provision of the Code specifies whether and to what extent a domestic partnership should be treated as an entity or an aggregate for purposes of determining stock ownership under section 958(a) for purposes of sections 951 and 951A. According to the legislative history to the 1962 Act, section 958(a) is a ''limited rule of stock ownership for determining the amount taxable to a United States person,'' whereas section 958(b) is ''a broader set of constructive rules of ownership for determining whether the requisite ownership by United States persons exists so as to make a corporation a controlled foreign corporation or a United States person has the requisite ownership to be liable for tax under section 951(a).'' S. Rep. No. 1881 at 254 (1962). In light of the changes adopted in the Act (including the introduction of the GILTI regime), it is consistent with the intent of the Act to provide that domestic partnerships are treated in the same manner as foreign partnerships under section 958(a)(2) for purposes of sections 951(a) and 951A and any provision that applies by reference to sections 951 and 951A. As discussed in parts II and IV.A. of the Background section of this preamble, a domestic partnership may be treated as an aggregate of its partners or as an entity separate from its partners for purposes of a provision, depending on which characterization is more appropriate to carry out the purpose of the provision. In this regard, the Treasury Department and the IRS have determined that treating a domestic partnership as an aggregate for purposes of sections 951 and 951A is appropriate because the partners of the partnership generally are the ultimate taxable owners of the CFC and thus their inclusions under sections 951 and 951A are properly computed at the partner level regardless of whether the partnership is foreign or domestic.

Based on the foregoing, the Treasury Department and the IRS have determined that a domestic partnership should be treated consistently as an aggregate of its partners in determining the ownership of stock within the meaning of section 958(a) for purposes of sections 951 and 951A, and any provision that applies by reference to section 951 or section 951A, except for purposes of determining whether a U.S. person is a U.S. shareholder, whether a U.S. shareholder is a controlling domestic shareholder (as defined in § 1.964–1(c)(5)), and whether a foreign corporation is a CFC. See proposed § 1.958–1(d). This aggregate treatment does not apply for any other purposes of the Code, including for purposes of section 1248. However, the Treasury Department and the IRS request comments on other provisions in the Code that apply by reference to ownership within the meaning of section 958(a) for which aggregate treatment for domestic partnerships would be appropriate. The Treasury Department and the IRS also request comments on whether, and for which purposes, the aggregate treatment for domestic partnerships should be extended to the determination of the controlling domestic shareholders (as defined in § 1.964–1(c)(5)) of a CFC, such that some or all of the partners who are U.S. shareholders of the CFC, rather than the partnership, make any elections applicable to the CFC for purposes of sections 951 and 951A.

B. Applicability Date and Comment Request With Respect to Transition

The proposed regulations are proposed to apply to taxable years of foreign corporations beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** (the ''finalization date''), and to taxable years of a U.S. person in which or with which such taxable years of foreign corporations end. See proposed § 1.958–1(d)(4). With respect to taxable years of foreign corporations beginning before the finalization date, the proposed regulations provide that a domestic partnership may apply § 1.958–1(d), as included in the final regulations, for taxable years of a foreign corporation beginning after December 31, 2017, and for taxable years of a domestic partnership in which or with which such taxable years of the foreign corporation end (the ''applicable years''), provided that the partnership, domestic partnerships that are related (within the meaning of section 267 or 707) to the partnership, and certain partners consistently apply § 1.958–1(d) with respect to all foreign corporations whose stock they own within the meaning of section 958(a) (generally determined without regard to § 1.958–1(d)). See proposed § 1.958–1(d)(4). A domestic partnership may rely on proposed § 1.958–1(d) with respect to taxable years beginning after December 31, 2017, and beginning before the date that these regulations are published as final regulations in the **Federal Register**, provided that the partnership, domestic partnerships that are related (within the meaning of section 267 or 707) to the partnership, and certain partners consistently apply proposed § 1.958–1(d) with respect to all foreign corporations whose stock they own within the meaning of section 958(a) (generally determined without regard to proposed § 1.958–1(d)). See id.

Once proposed § 1.958–1(d) applies as a final regulation, § 1.951A–1(e) and § 1.951–1(h) (providing an aggregate treatment of domestic partnerships, but only for purposes of section 951A and limited subpart F purposes, respectively) would be unnecessary because the scope of those regulations would effectively be subsumed by § 1.958–1(d). Therefore, the proposed regulations would revise the applicability dates of § 1.951A–1(e) and § 1.951–1(h), so that those provisions do not apply once the final regulations under section 958 apply.

Historically, domestic partnerships have been treated as owning stock within the meaning of section 958(a) for purposes of determining their subpart F inclusions, and thus PTEP accounts were maintained, and related basis adjustments were made, at the partnership level. Upon the finalization of the proposed regulations, domestic partnerships will cease to be treated as owning stock of foreign corporations under section 958(a) for purposes of determining a subpart F inclusion, and instead their partners will be treated as owning stock under section 958(a). The Treasury Department and the IRS request comments on appropriate rules for the transition to the aggregate approach to domestic partnerships described in the proposed regulations. Comments are specifically requested as to necessary adjustments to PTEP and related basis amounts and capital accounts after finalization. In addition, comments are requested as to whether aggregate treatment of domestic partnerships should be extended to other ''pass-through'' entities, such as certain trusts or estates.

Comments are also requested with respect to the application of the PFIC regime after finalization, and whether elections (including elections under sections 1295 and 1296) and income inclusions under the PFIC rules are more appropriately made at the level of the domestic partnership or at the level of the partners. Specifically, the Treasury Department and the IRS are considering the operation of the PFIC regime where U.S. persons are partners of a domestic partnership that owns stock of a foreign corporation that is a PFIC, some of those partners might themselves be U.S. shareholders of the foreign corporation, and the foreign corporation might not be treated as a PFIC with respect to such U.S. shareholders under section 1297(d) if the foreign corporation is also a CFC. Comments should consider how any recommended approach would interact with the determinations of a partner's basis in its interest and capital accounts determined and maintained in accordance with § 1.704–1(b)(2).

II. GILTI High Tax Exclusion

A. Expansion To Exclude Other High-Taxed Income

In response to comments, the Treasury Department and the IRS have determined that the GILTI high tax exclusion should be expanded (on an elective basis) to include certain high-taxed income even if that income would not otherwise be FBCI or insurance income. In particular, the Treasury Department and the IRS have determined that taxpayers should be permitted to elect to apply the exception under section 954(b)(4) with respect to certain classes of income that are subject to high foreign taxes within the meaning of that provision. Before the Act, such an election would have had no effect with respect to items of income that were excluded from FBCI or insurance income for other reasons. Nevertheless, section 954(b)(4) is not explicitly restricted in its application to an item of income that first qualifies as FBCI or insurance income; rather, the provision applies to ''any item of income received by a controlled foreign corporation.'' Therefore, any item of gross income, including an item that would otherwise be gross tested income, could be excluded from FBCI or insurance income ''by reason of'' section 954(b)(4) if the provision is one of the reasons for such exclusion, even if the exception under section 954(b)(4) is not the sole reason. Any item thus excluded from FBCI or insurance income by reason of section 954(b)(4) would then also be excluded from gross tested income under the GILTI high tax exclusion, as modified in these proposed regulations.

The legislative history evidences an intent to exclude high-taxed income from gross tested income. See Senate Explanation at 371 (''The Committee believes that certain items of income earned by CFCs should be excluded from the GILTI, either because they should be exempt from U.S. tax—as they are generally not the type of income that is the source of base erosion concerns—or are already taxed currently by the United States. Items of income excluded from GILTI because they are exempt from U.S. tax under the bill include foreign oil and gas extraction income (which is generally immobile) and income subject to high levels of foreign tax.''). The proposed regulations, which permit taxpayers to electively exclude a CFC's high-taxed income from gross tested income, are consistent, therefore, with this legislative history. Furthermore, an election to exclude a CFC's high-taxed income from gross tested income allows a U.S. shareholder to ensure that its high-taxed non-subpart F income is eligible for the same treatment as its high-taxed FBCI and insurance income, and thus eliminates an incentive for taxpayers to restructure their CFC operations in order to convert gross tested income into FBCI for the sole purpose of availing themselves of section 954(b)(4) and, thus, the GILTI high tax exclusion.

For the foregoing reasons, the proposed regulations provide that an election may be made for a CFC to exclude under section 954(b)(4), and thus to exclude from gross tested income, gross income subject to foreign income tax at an effective rate that is greater than 90 percent of the rate that would apply if the income were subject to the maximum rate of tax specified in section 11 (18.9 percent based on the current rate of 21 percent). See proposed § 1.951A–2(c)(6)(i). The election is made by the CFC's controlling domestic shareholders with respect to the CFC for a CFC inclusion year by attaching a statement to an amended or filed return in accordance with forms, instructions, or administrative pronouncements. See proposed § 1.951A–2(c)(6)(v)(A). If an election is made with respect to a CFC, the election applies to exclude from gross tested income all the CFC's items of income for the taxable year that meet the effective rate test in proposed § 1.951A–2(c)(6)(iii) and is binding on all the U.S. shareholders of the CFC. See proposed § 1.951A–2(c)(6)(v)(B). The election is effective for a CFC for the CFC inclusion year for which it is made and all subsequent CFC inclusion years of the CFC unless revoked by the controlling domestic shareholders of the CFC. See proposed § 1.951A–2(c)(6)(v)(C).

An election may generally be revoked by the controlling domestic shareholders of the CFC for any CFC inclusion year. See proposed § 1.951A–2(c)(6)(v)(D)(*1*). However, upon revocation for a CFC inclusion year, a new election generally cannot be made for any CFC inclusion year of the CFC that begins within sixty months after the close of the CFC inclusion year for which the election was revoked, and that subsequent election cannot be revoked for a CFC inclusion year that begins within sixty months after the close of the CFC inclusion year for which the subsequent election was made. See proposed § 1.951A–2(c)(6)(v)(D)(*2*)(*i*). An exception to this 60-month limitation may be permitted by the Commissioner with respect to a CFC if the CFC undergoes a change of control. See proposed § 1.951A–2(c)(6)(v)(D)(*2*)(*ii*).

Finally, if a CFC is a member of a controlling domestic shareholder group, the election applies with respect to each member of the controlling domestic shareholder group. See proposed § 1.951A–2(c)(6)(v)(E)(*1*). A ''controlling domestic shareholder group'' is defined as two or more CFCs if more than 50 percent of the stock (by voting power) of each CFC is owned (within the meaning of section 958(a)) by the same controlling domestic shareholder (or persons related to such controlling domestic shareholder) or, if no single controlling domestic shareholder owns (within the meaning of section 958(a)) more than 50 percent of the stock (by voting power) of each corporation, more than 50 percent of the stock (by voting power) of each corporation is owned (within the meaning of section 958(a)) in the aggregate by the same controlling domestic shareholders and each controlling domestic shareholder owns (within the meaning of section 958(a)) the same percentage of stock in each CFC. See proposed § 1.951A–2(c)(6)(v)(E)(*2*). Accordingly, an election made under proposed § 1.951A–2(c)(6)(v) applies with respect to each item of income of each CFC in a group of commonly controlled CFCs that meets the effective rate test in proposed § 1.951A–2(c)(6)(iii). The Treasury Department and the IRS request comments on the manner and terms of the election for the exception from gross tested income, including whether the limitations with respect to revocations and the consistency requirements should be modified, such as by allowing the election to be made on an item-by-item or a CFC-by-CFC basis.

In general, the relevant items of income for purposes of the election under section 954(b)(4) pursuant to proposed § 1.951A–2(c)(6) are all items of gross tested income attributable to a qualified business unit (''QBU''). See proposed § 1.951A–2(c)(6)(ii)(A)(*1*). For example, a CFC that owns a disregarded entity that qualifies as a QBU may have one item of income with respect to the CFC itself (which is a per se QBU) and another item of income with respect to the disregarded entity. The proposed regulations provide that the gross income attributable to a QBU is determined by reference to the items of gross income reflected on the books and records of the QBU, determined under Federal income tax principles, except that income attributable to a QBU must be adjusted to account for certain disregarded payments. See proposed § 1.951A–2(c)(6)(ii)(A)(*2*). The proposed regulations provide an example to illustrate the application of this rule. See proposed § 1.951A–2(c)(6)(vi).

Comments are requested on whether additional rules are needed to properly account for other instances in which the income base upon which foreign tax is imposed does not match the items of income reflected on the books and records of the QBU determined under Federal income tax principles. For example, comments are requested on whether special rules are needed for associating taxes with income with respect to partnerships (including hybrid partnerships), disregarded entities, or reverse hybrid entities, and how to address circumstances in which QBUs are permitted to share losses or determine tax liability based on combined income for foreign tax purposes. Comments are also requested as to whether all of a CFC's QBUs located within a single foreign country or possession should be combined for purposes of performing the effective rate test in proposed § 1.951A–2(c)(6)(iii) and whether the definition of QBU should be modified for purposes of the GILTI high tax exclusion in respect of the requirement to have a trade or business, maintain books and records, or other rules relating to QBUs.

Under § 1.954–1(d)(3), the determination of taxes paid or accrued with respect to an item of income for purposes of the exception under section 954(b)(4) is determined for each U.S. shareholder based on the amount of foreign income taxes that would be deemed paid under section 960 if the item of income were included by the U.S. shareholder under section 951(a)(1)(A). Calculating the effective tax rate for purposes of the election under section 954(b)(4) with respect to gross tested income by reference to section 960(d) would not be consistent with the aggregate nature of the computation under section 960(d). Furthermore, the Treasury Department and the IRS have determined that the Act's change to section 960(a) from a pooling based approach to an annual attribution of taxes to income requires revising § 1.954–1(d)(3). Therefore, the proposed regulations provide that for purposes of both the exception under section 954(b)(4) and the GILTI high tax exclusion, the effective rate of foreign tax imposed on an item of income is determined solely at the CFC level by allocating and apportioning the foreign income taxes paid or accrued by the CFC in the current year to the CFC's gross income in that year based on the rules described in the regulations under section 960 for determining foreign income taxes ''properly attributable'' to income. See § 1.960–1(d), as proposed to be amended in 83 FR 63257 (December 7, 2018).

To the extent foreign income taxes are allocated and apportioned to items of income that are excluded from gross tested income by the GILTI high tax exclusion, none of those foreign income taxes are properly attributable to tested income and thus none are allowed as a deemed paid credit under section 960. See § 1.960–1(e), as proposed to be amended in 83 FR 63259 (December 7, 2018). In addition, if an item of income is excluded from gross tested income by reason of the GILTI high tax exclusion, the property used to produce that income, because not used in the production of gross tested income, does not qualify as specified tangible property, in whole or in part, and therefore the adjusted basis in the property is not taken into account in determining qualified business asset investment. See § 1.951A–3(b) and (c)(1).

The proposed regulations also clarify the scope of each item of income under § 1.954–1(c)(1)(iii), consistent with the rules under § 1.960–1(d)(2)(ii)(B), as proposed to be amended in 83 FR 63257 (December 7, 2018).

B. Applicability Date

The changes related to the election to exclude a CFC's gross income subject to high foreign income taxes under section 954(b)(4) are proposed to apply to taxable years of foreign corporations beginning on or after the date that final regulations are published in the **Federal Register**, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13771, 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. The Executive Order 13771 designation for any final rule resulting from the proposed regulation will be informed by comments received. The preliminary Executive Order 13771 designation for this proposed rule is regulatory.

The proposed regulation has been designated by the Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (MOA, April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. OIRA has designated this proposed regulation as economically significant under section 1(c) of the MOA. Accordingly, these proposed regulations have been reviewed by the Office of Management and Budget. For more detail on the economic analysis, please refer to the following analysis.

A. Need for the Proposed Regulations

The proposed regulations are required to provide a mechanism by which taxpayers can elect the high tax exception of section 954(b)(4) in order to exclude certain high-taxed income from taxation under section 951A and to conform the treatment of domestic partnerships for purposes of the subpart F regime with the treatment of domestic partnerships for purposes of section 951A.

B. Background

The Tax Cuts and Jobs Act (the ''Act'') established a system under which certain earnings of a foreign corporation can be repatriated to a corporate U.S. shareholder without U.S. tax. See section 14101(a) of the Act and section 245A. However, Congress recognized that, without any base protection measures, this system, known as a participation exemption system, could incentivize taxpayers to allocate income—in particular, mobile income from intangible property that would otherwise be subject to the full U.S. corporate tax rate—to controlled foreign corporations (''CFCs'') operating in low- or zero-tax jurisdictions. See Senate Explanation at 365. Therefore, Congress enacted section 951A in order to subject intangible income earned by a CFC to U.S. tax on a current basis, similar to the treatment of a CFC's subpart F income under section 951(a)(1)(A). However, in order to not harm the competitive position of U.S. corporations relative to their foreign peers, the global intangible low tax income (''GILTI'') of a corporate U.S. shareholder is effectively taxed at a reduced rate by reason of the deduction under section 250 (with the resulting U.S. tax further reduced by a portion of foreign tax credits under section 960(d)). Id.

The GILTI final regulations generally provide structure and clarity for the implementation of section 951A. However, the Treasury Department and the IRS determined that there remained two outstanding issues pertinent to the implementation of GILTI. The first of these issues pertains to the GILTI high tax exclusion under section 951A(c)(2)(A)(i)(III), which excludes from gross tested income any gross income excluded from foreign base company income (''FBCI'') (as defined in section 954) and insurance income (as defined in section 953) by reason of section 954(b)(4). The GILTI proposed regulations limited the application of the exclusion to income that would be included in FBCI or insurance income but for the high tax exception of section 954(b)(4). See proposed § 1.951A–2(c)(1)(iii). However, comments to the GILTI proposed regulations recommended that the statute be interpreted so that the GILTI high tax exclusion applies on an elective basis to a broader category of income, that is, any income that is subject to a high rate of foreign tax. Other comments suggested that because taxpayers have the ability to structure transactions so that they would qualify as FBCI or insurance income, the regulations should allow a taxpayer to elect to treat all income, or all high-taxed income, as FBCI or insurance income, with the result that such income would then be excluded from gross tested income under the GILTI high tax exclusion. Comments noted that, under the narrower application of the exclusion under the GILTI proposed regulations, taxpayers would be incentivized to affirmatively plan into subpart F income to permit such taxpayers to elect the high tax exception under section 954(b)(4) with respect to such income or to allow taxpayers to carry foreign tax credits attributable to such income to another taxable year under section 904(c). However, restructuring activities to convert gross tested income into subpart F income may cost significant time and money and is economically inefficient. The GILTI final regulations adopt this narrower application. See proposed § 1.951A–2(c)(1)(iii). However, the preamble to the GILTI final regulations indicated that proposed regulations would be issued to propose a framework under which taxpayers would be permitted to make an election to apply the high tax exception of section 954(b)(4) with respect to income that would otherwise be gross tested income in order to exclude that income from gross tested income by reason of the GILTI high tax exclusion.

The second of these issues pertains to the treatment of domestic partnerships for purposes of the subpart F regime. A U.S. shareholder of a CFC is required to include in gross income its pro rata share of the CFC's subpart F income under section 951(a)(1)(A), the amount determined under section 956, under section 951(a)(1)(B), and its GILTI inclusion amount under section 951A(a). Since the enactment of subpart F, domestic partnerships have generally been treated as entities separate from their partners, rather than as aggregates of their partners, for purposes of the subpart F regime, including for purposes of treating a domestic partnership as the U.S. shareholder that has the subpart F inclusion with respect to a CFC owned by the partnership. However, the GILTI final regulations generally adopt an aggregate approach to domestic partnerships for purposes of section 951A and the section 951A regulations. See § 1.951A–1(e)(1). Because the GILTI final regulations apply only for purposes of section 951A, absent the proposed regulations, a domestic partnership would still be treated as an entity for purposes of the subpart F regime. This inconsistency in the treatment of a domestic partnership for the purposes of section 951A and for purposes of the subpart F regime is problematic because it necessitates complicated coordination rules which could greatly increase compliance and administrative burden. Therefore, the proposed regulations conform the treatment of domestic partnerships for purposes of the subpart F regime with the treatment of domestic partnerships for purposes of section 951A.

C. Economic Analysis

1. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

2. Summary of Economic Effects

To assess the economic effects of the proposed regulations, the Treasury Department and the IRS considered economic effects arising from two provisions of the proposed regulations. These are (i) effects arising from the provision that provides substance and clarity regarding the application of the GILTI high tax exclusion in 951A(c)(2)(A)(i)(III) and (ii) simplification and coordination effects arising from conforming the treatment of domestic partnerships for purposes of subpart F with their treatment for purposes of section 951A.

The Treasury Department and the IRS have not undertaken quantitative estimates of these effects because any such quantitative estimates would be highly uncertain. For example, the proposed regulations include provisions that permit controlling domestic shareholders of CFCs to elect to apply the high tax exception of section 954(b)(4) to items of gross income that are subject to a foreign tax rate that is greater than 18.9 percent (based on the current U.S. corporate tax rate of 21 percent) for purposes of excluding such income from gross tested income under the GILTI high tax exclusion. Whether controlling domestic shareholders will choose to make the election will depend on their specific facts and circumstances, such as their U.S. expenses allocated to section 951A category income, their foreign tax credit position, and the distribution of their foreign activity between high- and low-tax jurisdictions.[2] Because GILTI is new,

[2] Specifically, the U.S. tax system reduces double taxation on a U.S. shareholder's GILTI inclusion amount by crediting a portion of certain foreign taxes paid by CFCs against the U.S. tax on the U.S. shareholder's GILTI inclusion amount. However, the U.S. foreign tax credit regime requires taxpayers to allocate U.S. deductible expenses, including interest, research and experimentation, and general and administrative expenses, to their foreign source income in the categories described in section 904(d) when determining the allowable foreign tax credits. The allocated expenses reduce net foreign source income within the section 904(d) categories, which can reduce allowable foreign tax credits. This may result in a smaller foreign tax credit than would be allowed if the limitation on foreign tax credits was

the Treasury Department and the IRS do not have readily available data to project these items in this context. Furthermore, the election would be made with respect to qualified business units (QBUs) rather than with respect to CFCs or specific items of income, and the Treasury Department and the IRS do not have readily available data on activities at the QBU level. In addition, due to the taxpayer-specific nature of the factors influencing a decision to utilize the GILTI high-tax exclusion, the Treasury Department and the IRS do not have readily available data or models to predict the marginal effective tax rates that would prevail under these provisions for the varied forms of foreign investments that taxpayers might consider and thus cannot predict with reasonable precision the difference in economic activity, relative to the baseline, that might be undertaken by taxpayers based on this election.

The proposed regulations also contain provisions to conform the treatment of domestic partnerships for purposes of subpart F with their treatment for purposes of section 951A. Under the proposed regulations, the tax treatment of domestic partners that are U.S. shareholders of a CFC owned by the domestic partnership differs from the tax treatment of domestic partners that are not U.S. shareholders of such CFC. The Treasury Department and the IRS do not have readily available data to identify these types of partners. The Treasury Department and the IRS further do not have readily available data or models to predict with reasonable precision the set of marginal effective tax rates that taxpayers might face under these provisions nor the effects of those marginal effective tax rates on economic activity relative to the baseline.

With these considerations in mind, parts I.C.3.a.ii and iii of this Special Analyses section explain the rationale behind the proposed regulations' approach to the GILTI high tax exclusion and qualitatively evaluate the alternatives considered. Part 1.C.3.b of this Special Analyses section explains the rationale for the coordination in the treatment of domestic partnerships and qualitatively evaluates the alternatives considered.

3. Economic Effects of Specific Provisions

The Treasury Department and IRS solicit comments on each of the items discussed in this Special Analyses section and on any other items of the proposed regulations not discussed in this section. The Treasury Department and the IRS particularly solicit comments that provide data, other evidence, or models that could enhance the rigor of the process by which the final regulations might be developed.

a. Exclusion of Income Subject to High Rate of Foreign Tax

i. Description

The proposed regulations permit U.S. shareholders of CFCs to make an election under section 954(b)(4) with respect to high-taxed income in order to exclude such income from gross tested income under the GILTI high tax exclusion. Under section 954(b)(4), high-taxed income is defined as income subject to a foreign effective tax rate greater than 90 percent of the maximum U.S. corporate tax rate (18.9 percent based on the current U.S. corporate tax rate of 21 percent). Under the proposed regulations, the determination as to whether income is high-taxed is made at the QBU level. However, an election made with respect to a CFC applies with respect to each high-taxed QBU of the CFC (including potentially the CFC itself), and a U.S. shareholder that makes the election with respect to a CFC generally must make the same election with respect to each of its CFCs. In general, the election may be made or revoked at any time, except that, if a U.S. shareholder revokes an election with respect to a CFC, the U.S. shareholder cannot make the election again within five years after the revocation, and then if subsequently made, the election cannot be revoked again within five years of the subsequent election.

ii. Alternatives Considered for Determining the Scope of the GILTI High Tax Exclusion

The Treasury Department and the IRS considered a number of options to address the types of income excluded from gross tested income by the GILTI high tax exclusion. The options were (i) to exclude from gross tested income only income that would be subpart F income but for the high tax exception of section 954(b)(4); (ii) in addition to excluding the aforementioned income, to exclude from gross tested income on an elective basis an item of gross income that is excluded by reason of another exception to subpart F, if such income is subject to a foreign effective tax rate greater than 18.9 percent; and (iii) to exclude from gross tested income on an elective basis any item of gross income subject to a foreign effective tax rate greater than 18.9 percent. The Treasury Department and the IRS considered the other recommended options discussed in part IV.B of the Background section, but determined that those other options are not authorized by the relevant statutory provisions.

The first option considered was to exclude from gross tested income only income that would be FBCI or insurance income but for the high tax exception of section 954(b)(4), which is the interpretation of the GILTI high tax exclusion in the GILTI proposed regulations. This narrow approach is consistent with a reasonable interpretation of the statutory text, which excludes from gross tested income only income that is excluded from subpart F income ''by reason of section 954(b)(4).'' Moreover, this approach is consistent with current regulations under section 954, which permit an election under section 954(b)(4) only with respect to income that is not otherwise excluded from subpart F income by reason of another exception (for example, section 954(c)(6) or 954(h)). However, under this approach, taxpayers with high-taxed gross tested income would have incentives to restructure their foreign operations in order to convert their gross tested income into subpart F income. For instance, a taxpayer could restructure its operations to have a CFC purchase personal property from, or sell personal property to, a related person without substantially contributing to the manufacture of the property in its country of incorporation, with the result that the CFC's income from the disposition of the property is foreign base company sales income within the meaning of section 954(d). Any such restructuring may be unduly costly and only available to certain taxpayers. Further, such reorganization to realize a specific income treatment suggests that tax instead of business considerations are determining business structures. This can lead to higher compliance costs and inefficient investment. Therefore, the Treasury Department and the IRS rejected this option.

The second option considered was to broaden the application of the GILTI high tax exclusion to allow taxpayers to elect under the high tax exception of section 954(b)(4) to exclude from gross

determined based only on the local country tax assessed on the tested income taken into account in determining GILTI. The election to apply the high tax exception of section 954(b)(4) with respect to any high-taxed income allows taxpayers to eliminate the need to use foreign tax credits to reduce GILTI tax liability on such income by removing such income from gross tested income; however, taxpayers choosing the election will not be able to use the foreign tax credits associated with that income against other section 951A category income, and they will not be able to use the tangible assets owned by high tax QBUs in their QBAI computation. Therefore, taxpayers will have to evaluate their individual facts and circumstances to determine whether they should make the election.

tested income an item of gross income that is subject to a foreign effective tax rate greater than 18.9 percent, if such income was also excluded from FBCI or insurance income by reason of another exception to subpart F. Under this interpretation, income such as active financing income that is excluded from subpart F income under section 954(h), active rents or royalties that are excluded from subpart F income under 954(c)(2)(A), and related party payments that are excluded from subpart F income under section 954(c)(6) could also be excluded from gross tested income under the GILTI high tax exclusion if such items of income are high taxed within the meaning of section 954(b)(4). This broader approach represents a plausible interpretation of the GILTI high tax exclusion; that is, that an item of income could be excluded both ''by reason of section 954(b)(4)'' and by reason of another exception. However, this approach would provide taxpayers the ability to exclude their CFCs' high-taxed income that would be subpart F income but for an exception (for example, active financing income), while denying taxpayers the same ability with respect to their CFCs' high-taxed income that is not subpart F income in the first instance (for example, active business income), without any general economic benefit from such differential treatment. Furthermore, taxpayers with items of high-taxed income that are not subpart F income would still be incentivized to restructure their foreign operations in order to convert their high-taxed gross tested income into subpart F income, which poses the same compliance costs and inefficiencies as the first option. Therefore, the Treasury Department and the IRS rejected this option.

The third option, which is adopted in the proposed regulations, is to provide an election to broaden the scope of the high tax exception under section 954(b)(4) for purposes of the GILTI high tax exclusion to apply to any item of income that is subject to a foreign effective tax rate greater than 18.9 percent. The proposed regulations permit controlling domestic shareholders of CFCs to elect to apply the high tax exception under section 954(b)(4) to items of gross income that would not otherwise be FBCI or insurance income. If this high tax exception is elected, the GILTI high tax exclusion will exclude the item of gross income from gross tested income. Under the election, an item of gross income is subject to a high rate of foreign tax if, after taking into account properly allocable expenses, the net item of income is subject to a foreign effective tax rate greater than 90 percent of the maximum U.S. corporate tax rate (18.9 percent based on the current U.S. corporate tax rate of 21 percent). This option therefore establishes a framework for applying the high tax exception under section 954(b)(4), including rules to determine the scope of an item of income that would otherwise be gross tested income to which the election applies and to determine the rate of foreign tax on such item.

The approach chosen by the proposed regulations is consistent with the legislative history to section 951A, which evidences an intent to tax low-taxed income of CFCs that presents base erosion concerns. The approach is also supported by a reasonable interpretation of the high tax exception of section 954(b)(4), which applies to ''any item of income'' of a CFC, not just income that would otherwise be FBCI or insurance income. Furthermore, contrary to the first two options, this approach permits all similarly situated taxpayers with CFCs subject to a high rate of foreign tax to make the election with respect to such income to exclude it from gross tested income, and reduces the incentive for taxpayers to restructure their operations to convert their high-taxed gross tested income into subpart F income for U.S. tax purposes.

For taxpayers that make the election, this approach reduces the taxpayers' cost of capital on foreign investment by reducing U.S. tax on such taxpayers' GILTI relative to the baseline. At the margin, the lower cost of capital may increase foreign investment by U.S.-parented firms. Further, removing high-taxed tested income from the GILTI tax base could change the incentives for the location of tangible assets. The magnitude of these effects is highly uncertain because of the uncertainty surrounding the number and attributes of the taxpayers that will find it advantageous to make the election and because the relationship between the marginal effective tax rate at the QBU level and foreign investment by U.S. taxpayers is not well known. In addition, the impact of tax considerations on taxpayer investment decisions depends on a number of international tax provisions, many of which interact in complex ways.

iii. Alternatives Considered for Determining High-Taxed Income

The Treasury Department and the IRS next considered options for determining whether an item of income is subject to the foreign effective tax rate described in section 954(b)(4). The options considered were (i) apply the determination on an item-by-item basis; (ii) apply the determination on a CFC-by-CFC basis; or (iii) apply the determination on a QBU-by-QBU basis.

The first option was to determine whether income is high-taxed income within the meaning of section 954(b)(4) on an item-by-item basis. This approach would be consistent with the language of section 954(b)(4), which applies to an ''item of income'' of a CFC that is sufficiently high tax. However, this approach would be complex and difficult to administer because it would require analyzing each item of income to determine whether, under Federal tax principles, such item is subject to a sufficiently high foreign effective tax rate. In fact, for this reason, the current regulations that implement the high tax exception of section 954(b)(4) for purposes of subpart F income do not require an item-by-item determination and aggregate all items of income into separate categories of income for purposes of determining whether each such category is high tax. See § 1.954–1(d)(2). Therefore, the Treasury Department and the IRS rejected this option.

The second option was to apply the determination based on all the items of income of the CFC. On the one hand, this approach would minimize complexity and would be relatively easy to administer. On the other hand, this approach could permit inappropriate tax planning, such as combining operations subject to different rates of tax into a single CFC. This would have the effect of ''blending'' the rates of foreign tax imposed on the income, which could result in low- or non-taxed income being excluded as high-taxed income by being blended with much higher-taxed income. The low-taxed income in this scenario is precisely the sort of base erosion-type income that the legislative history describes section 951A as intending to tax, and such tax motivated planning behavior is economically inefficient.

The third option, which is adopted in the proposed regulations, is to apply the high tax exception based on the items of gross income of a QBU of the CFC. Under this approach, the net income that is taxed by the foreign jurisdiction in each QBU must be determined. For example, if a CFC earned $100x of tested income through a QBU in Country A and was taxed at a 30 percent rate and earned $100x of tested income through another QBU in Country B and was taxed at 0 percent, the blended rate of tax on all of the CFC's tested income is 15 percent ($30x tax/$200x tested income). However, if the high tax exception applies to each of a CFC's

QBUs based on the income earned by that QBU then the blending of different rates would be minimized. Although applying the high tax exception on the basis of a QBU, rather than the CFC as a whole, may be more complex and administratively burdensome under certain circumstances, it more accurately pinpoints income subject to a high rate of foreign tax and therefore continues to subject to tax the low-taxed base erosion-type income that the legislative history describes section 951A as intending to tax. Accordingly, the proposed regulations apply the high tax exception of section 954(b)(4) based on the items of net income of each QBU of the CFC.

iv. Affected Taxpayers

The proposed regulations potentially affect those taxpayers that have at least one CFC with at least one QBU (including, potentially, the CFC itself) that has high-taxed income. A taxpayer with CFCs that have a mix of high-taxed and low-taxed income (determined on a QBU-by-QBU basis) will need to evaluate the benefit of eliminating any tax under section 951A with respect to high-taxed income with the costs of forgoing the use of such taxes against other section 951A category income and the use of tangible assets in the computation of QBAI. Taxpayers with CFCs that have only low-taxed income are not eligible to elect the high tax exception and hence are unaffected by this provision.

The Treasury Department and the IRS estimate that there are approximately 4,000 business entities (corporations, S corporations, and partnerships) with at least one CFC that pays a foreign effective tax rate above 18.9 percent. The Treasury Department and the IRS further estimate that, for the partnerships with at least one CFC that pays a foreign effective tax rate greater than 18.9 percent, there are approximately 1,500 partners that have a large enough share to potentially qualify as a 10 percent U.S. shareholder of the CFC.[3] The 4,000 business entities and the 1,500 partners provide an approximate estimate of the number of taxpayers that could potentially be affected by an election into the high tax exception. The figure is approximate since there is an imperfect correspondence between high-taxed CFCs and high-taxed QBUs, and, furthermore, not all taxpayers that are eligible for the election would choose to make the election. The Treasury Department and the IRS do not have readily available data to determine how many of these taxpayers would benefit from the election.

Tabulations from the IRS Statistics of Income 2014 Form 5471 file[4] further indicate that approximately 85 percent of earnings and profits before taxes of CFCs are subject to an average foreign effective tax rate that is less than or equal to 18.9 percent, accounting for approximately 30 percent of CFCs. The data indicate several examples of jurisdictions with effective tax rates above 18.9 percent, such as France, Italy, and Japan. However, information is not readily available to determine how many QBUs are part of the same CFC and what the effective foreign tax rates are with respect to such QBUs. Furthermore, the determination of whether or not to elect the high tax exception will be made at the shareholder (not CFC) level, after having evaluated the full impact of doing so across all of the shareholder's CFCs. Taxpayers potentially more likely to elect the high tax exception are those taxpayers with CFCs that only operate in high-tax jurisdictions.

b. Domestic Partnership Treatment for Subpart F

i. Description

Under the statute, a U.S. shareholder of a CFC is required to include in gross income its pro rata share of the CFC's subpart F income under section 951(a)(1)(A), the amount determined under section 956, under section 951(a)(1)(B), and its GILTI inclusion amount under section 951A. The Code does not explicitly prescribe the treatment of domestic partnerships and their partners for purposes of subpart F. However, domestic partnerships have generally been treated as entities separate from their partners, rather than as aggregates of their partners, for purposes of subpart F, including for purposes of determining the amount included in the gross income of the domestic partnership (and the distributive share of such amount of its domestic partners) under section 951(a). The GILTI final regulations adopt an aggregate approach to domestic partnerships, but this aggregate treatment applies only for purposes of section 951A.

ii. Alternatives Considered

The Treasury Department and the IRS considered two options for the treatment of domestic partnerships for purposes of subpart F. The first option was to retain the entity approach to domestic partnerships for purposes of subpart F. While this approach would be consistent with the longstanding entity approach to domestic partnerships for purposes of subpart F inclusions, it would result in domestic partnerships being treated inconsistently for purposes of subpart F and section 951A, despite both regimes applying to U.S. shareholders and their CFCs. This inconsistent treatment of domestic partnerships could result in a domestic partnership including subpart F income in gross income under section 951(a) and its partners including GILTI in their gross income under section 951A(a), which would introduce substantial complexity and uncertainty in the application of provisions that require basis and E&P adjustments with respect to CFCs and their U.S. shareholders for amounts included in income under sections 951(a) and 951A(a). This option would also continue the inconsistent treatment of domestic partnerships and foreign partnerships (which generally are treated as aggregates) for purposes of the subpart F rules, despite the lack of a substantial policy justification for treating domestic partners of a partnership differently based upon the law under which the partnership is created or organized. In this regard, this option would require ''small'' partners of a domestic partnership (that is, partners that are not themselves U.S. shareholders of CFCs owned by the domestic partnership) to include in income their distributive share of the domestic partnership's subpart F inclusion with respect to CFCs of which the small partners are not themselves U.S. shareholders. In contrast, if the domestic partnership were instead a foreign partnership, the small partners would not include any amount in gross income under section 951(a) (or a distributive share of such amount) with respect to CFCs of which such partners were not U.S. shareholders.

The second option would adopt an aggregate approach to domestic partnerships by treating stock owned by a domestic partnership as being owned proportionately by its partners for purposes of determining the U.S.

[3] Data are from IRS's Research, Applied Analytics, and Statistics division based on E-file data available in the Compliance Data Warehouse, for tax years 2015 and 2016. The counts include Category 4 and Category 5 IRS Form 5471 filers. Category 4 filers are U.S. persons who had control of a foreign corporation during the annual accounting period of the foreign corporation. Category 5 filers are U.S. shareholders who own stock in a foreign corporation that is a CFC and who owned that stock on the last day in the tax year of the foreign corporation in that year in which it was a CFC. For full definitions, see *https://www.irs.gov/pub/irs-pdf/i5471.pdf.*

[4] The IRS Statistics of Income Tax Stats report on Controlled Foreign Corporations can be accessed here: *https://www.irs.gov/statistics/soi-tax-stats-controlled-foreign-corporations.*

shareholder that has the subpart F inclusion. This approach is consistent with the approach adopted for section 951A in the GILTI final regulations. Under this approach, a domestic partnership would not be the U.S. shareholder of a foreign corporation that includes subpart F income in its gross income under section 951(a). Instead, only the partners of the domestic partnership that are U.S. shareholders of a CFC owned through the domestic partnership would include subpart F income of the CFC in their gross income.

This approach is supported by public comments requesting harmonization of the treatment of domestic partnerships for purposes of the GILTI and subpart F regimes. The harmonization of the treatment of domestic partnerships for purposes of the GILTI and subpart F regimes is expected to result in substantial simplification of related rules (for example, previously taxed earnings and profits and related basis rules), consistency in the treatment of domestic partnerships and foreign partnerships, and the reduction of burden (both administrative burden and tax liability) on taxpayers that are small partners. This third option is effectuated in the proposed regulations by using the existing framework for foreign partnerships, which is well-developed and more administrable than a new framework.

iii. Affected Taxpayers

The Treasury Department and the IRS estimate that there were approximately 7,000 U.S. partnerships with CFCs that e-filed at least one Form 5471 as Category 4 or 5 filers in 2015 and 2016.[5] The identified partnerships had approximately 2 million partners, as indicated by the number of Schedules K–1 filed by the partnerships. This number includes both domestic and foreign partners, so it substantially overstates the number of partners that would be affected by the proposed regulations, which potentially affect only domestic partners.[6] The proposed regulations affect domestic partners that are U.S. shareholders of a CFC owned by the domestic partnership because such partners will determine their subpart F inclusion amount by reference to their pro rata shares of subpart F income of CFCs owned by the partnership. Domestic partners that are not U.S. shareholders of a CFC owned by the domestic partnership will neither determine their own subpart F inclusion amount by reference to their pro rata shares of subpart F income of CFCs owned by the partnership nor include in their income a distributive share of the partnership's subpart F inclusion amount. This latter group is likely to be a substantial portion of domestic partners given the high number of partners per partnership, and they will have lower compliance costs as a result of the proposed regulations. Because it is not possible to precisely identify these types of partners based on available data, this number is an upper bound of partners who would have been affected by this rule had this rule been in effect in 2015 or 2016.

II. Paperwork Reduction Act

The collection of information in these proposed regulations is in proposed § 1.951A–2(c)(6)(v). The collection of information in proposed § 1.951A–2(c)(6)(v) is an election that a controlling domestic shareholder of a CFC may make to apply the high tax exception of section 954(b)(4) to gross income of a CFC. The election is made by attaching a statement to an original or amended income tax return in order to elect to apply the high tax exception of section 954(b)(4) to gross income of a CFC. For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (''PRA''), the reporting burden associated with proposed § 1.951A–2(c)(6)(v) will be reflected in the PRA submission associated with income tax returns in the Form 990 series, Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series (see chart at the end of this part II for the current status of the PRA submissions for these forms). In 2018, the IRS released and invited comments on drafts of the above five forms in order to give members of the public advance notice and an opportunity to submit comments. The IRS received no comments on the portions of the forms that relate to section 951A during the comment period. Consequently, the IRS made the forms available in late 2018 and early 2019 for use by the public. The IRS is contemplating making additional changes to forms to take into account these proposed regulations.

The IRS estimates the number of affected filers to be the following:

TAX FORMS IMPACTED

Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
§ 1.951A–2(c)(6)(v) Election to apply the high tax exception of section 954(b)(4) to gross income of a CFC.	25,000–35,000	Form 990 series, Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.

Source: MeF, DCS, and IRS's Compliance Data Warehouse.

This estimate is based on filers of income tax returns with a Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations,'' attached because only filers that are U.S. shareholders of CFCs would be subject to the information collection requirements.

The current status of the PRA submissions related to the tax forms that will be revised as a result of the information collection in proposed § 1.951A–2(c)(6)(v) is provided in the accompanying table. The reporting burdens associated with the information collection in the proposed regulations are included in the aggregated burden estimates for OMB control numbers 1545–0123 (which represents a total estimated burden time for all forms and schedules for corporations of 3.157 billion hours and total estimated monetized costs of $58.148 billion ($2017)), 1545–0074 (which represents a

[5] Data are from IRS's Research, Applied Analytics, and Statistics division based on data available in the Compliance Data Warehouse. Category 4 filer includes a U.S. person who had control of a foreign corporation during the annual accounting period of the foreign corporation. Category 5 includes a U.S. shareholder who owns stock in a foreign corporation that is a CFC and who owned that stock on the last day in the tax year of the foreign corporation in that year in which it was a CFC. For full definitions, see *https://www.irs.gov/pub/irs-pdf/i5471.pdf.*

[6] This analysis is based on the tax data readily available to the Treasury Department at this time. Some variables may be available on tax forms that are not available for statistical purposes. Moreover, with new tax provisions, such as section 951A, relevant data may not be available for a number of years for statistical purposes.

total estimated burden time, including all other related forms and schedules for individuals, of 1.784 billion hours and total estimated monetized costs of $31.764 billion ($2017)), 1545–0092 (which represents a total estimated burden time, including all other related forms and schedules for trusts and estates, of 307,844,800 hours and total estimated monetized costs of $9.950 billion ($2016)), and 1545–0047 (which represents a total estimated burden time, including all other related forms and schedules for tax-exempt organizations, of 50.450 million hours and total estimated monetized costs of $1,297,300,000 ($2017)). The overall burden estimates provided for these OMB control numbers are aggregate amounts that relate to the entire package of forms associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms that will be revised as a result of the information collection in the proposed regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the proposed regulations. These burdens have been reported for other regulations related to the taxation of cross-border income and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burden that international tax provisions imposed prior to the Act. No burden estimates specific to the forms affected by the proposed regulations are currently available. The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations. The Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates would capture both changes made by the Act and those that arise out of discretionary authority exercised in the final regulations.

The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden. Proposed revisions (if any) to these forms that reflect the information collections contained in these proposed regulations will be made available for public comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.htm* and will not be finalized until after these forms have been approved by OMB under the PRA.

Form	Type of filer	OMB No.(s)	Status
Forms 990	Tax exempt entities (NEW Model).	1545–0047	Approved by OIRA 12/21/2018 until 12/31/2019. The form will be updated with OMB number 1545–0047 and the corresponding PRA Notice on the next revision.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201811-1545-003*		
Form 1040	Individual (NEW Model).	1545–0074	Limited Scope submission (1040 only) approved on 12/7/2018 until 12/31/2019. Full ICR submission for all forms in 6/2019. 60 Day FRN not published yet for full collection.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201808-1545-031*		
Form 1041	Trusts and estates	1545–0092	Submitted to OIRA for review on 9/27/2018.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201806-1545-014*		
Form 1065 and 1120	Business (NEW Model).	1545–0123	Approved by OIRA 12/21/2018 until 12/31/2019.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201805-1545-019*		

III. Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Section 951A generally affects U.S. shareholders of CFCs. The reporting burden in proposed § 1.951A–2(c)(6)(v) affects controlling domestic shareholders of a CFC that elect to apply the high tax exception of section 954(b)(4) to gross income of a CFC. Controlling domestic shareholders are generally U.S. shareholders who, in the aggregate, own more than 50 percent of the total combined voting power of all classes of stock of the foreign corporation entitled to vote. As an initial matter, foreign corporations are not considered small entities. Nor are U.S. taxpayers considered small entities to the extent the taxpayers are natural persons or entities other than small entities. Thus, proposed § 1.951A–2(c)(6)(v) generally only affects small entities if a U.S. taxpayer that is a U.S. shareholder of a CFC is a small entity.

Examining the gross receipts of the e-filed Forms 5471 that is the basis of the 25,000—35,000 respondent estimates, the Treasury Department and the IRS have determined that the tax revenue from section 951A estimated by the Joint Committee on Taxation for businesses of all sizes is less than 0.3 percent of gross receipts as shown in the table below. Based on data for 2015 and 2016, total gross receipts for all businesses with gross receipts under $25 million is $60 billion while those over $25 million is $49.1 trillion. Given that tax on GILTI inclusion amounts is correlated with gross receipts, this results in businesses with less than $25 million in gross receipts accounting for approximately 0.01 percent of the tax revenue. Data are not readily available to determine the sectoral breakdown of these entities. Based on this analysis, smaller businesses are not significantly impacted by these proposed regulations.

	2017 (billion)	2018 (billion)	2019 (billion)	2020 (billion)	2021 (billion)	2022 (billion)	2023 (billion)	2024 (billion)	2025 (billion)	2026 (billion)
JCT tax revenue	7.7	12.5	9.6	9.5	9.3	9.0	9.2	9.3	15.1	21.2
Total gross receipts	30,727	53,870	566,676	59,644	62,684	65,865	69,201	72,710	76,348	80,094
Percent	0.03	0.02	0.02	0.02	0.01	0.01	0.01	0.01	0.02	0.03

Source: Research, Applied Analytics and Statistics division (IRS), Compliance Data Warehouse (IRS) (E-filed Form 5471, category 4 or 5, C and S corporations and partnerships); Conference Report, at 689.

The data to assess the number of small entities potentially affected by proposed § 1.951A–2(c)(6)(v) are not readily available. However, businesses that are U.S. shareholders of CFCs are generally not small businesses because the ownership of sufficient stock in a CFC in order to be a U.S. shareholder generally entails significant resources and investment. The Treasury Department and the IRS welcome comments on whether the proposed regulations would affect a substantial number of small entities in any particular industry.

Regardless of the number of small entities potentially affected by proposed § 1.951A–2(c)(6)(v), the Treasury Department and the IRS have concluded that there is no significant economic impact on such entities as a result of proposed § 1.951A–2(c)(6)(v). As discussed above, smaller businesses are not significantly impacted by the proposed regulations. Furthermore, the requirements in proposed § 1.951A–2(c)(6)(v) apply only if a taxpayer chooses to make an election to apply a favorable rule. Consequently, the Treasury Department and the IRS have determined that proposed § 1.951A–2(c)(6)(v) will not have a significant economic impact on a substantial number of small entities. Accordingly, it is hereby certified that the collection of information requirements of proposed § 1.951A–2(c)(6)(v) would not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments from the public on the impact of proposed § 1.951A–2(c)(6)(v) on small entities.

The treatment of domestic partnerships as an aggregate of their partners in these proposed regulations for purposes of subpart F would reduce the burden on partners that are not U.S. shareholders of a CFC owned by the partnership because these partners will no longer be required to include in income a distributive share of subpart F income. The proposed regulations would also reduce burden on domestic partnerships that hold CFCs because these partnerships would no longer be required to calculate their partners' distributive share of subpart F income, resulting in compliance cost savings for the affected partnerships. As described in section II of this Special Analyses section, the Treasury Department and the IRS estimate that there are approximately 7,000 U.S. partnerships with CFCs that e-filed at least one Form 5471 as Category 4 or 5 filers in 2015 and 2016.[7] The identified partnerships had approximately 2 million domestic and foreign partners. However, this figure overstates the number of partners that would be affected by the proposed regulations, because the proposed regulations would not affect foreign partners of the affected U.S. partnerships. Of affected U.S. partnerships, business entities are a minority of the affected domestic partners. Because data to identify the size of domestic partners that are business entities are not readily available, this number is a high upper bound and is magnitudes greater than the number of affected domestic partners that are small businesses. Consequently, the Treasury Department and the IRS have determined that the proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, it is hereby certified that the proposed regulations would not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, 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 businesses.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. These proposed regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

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

Comments and Requests for 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 regulations and on changes to forms related to the proposed regulations. See also parts I.B and II.A of the Explanation of Provisions section (requesting specific comments related to the aggregate approach to domestic partnerships and GILTI high tax exclusion, respectively).

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, then notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

[7] Data are from IRS's Research, Applied Analytics, and Statistics division based on data available in the Compliance Data Warehouse. Category 4 filer includes a U.S. person who had control of a foreign corporation during the annual accounting period of the foreign corporation. Category 5 includes a U.S. shareholder who owns stock in a foreign corporation that is a CFC and who owned that stock on the last day in the tax year of the foreign corporation in that year in which it was a CFC. For full definitions, see *https://www.irs.gov/pub/irs-pdf/i5471.pdf.*

Drafting Information

The principal authors of these regulations are Joshua P. Roffenbender and Jorge M. Oben of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

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 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 2.** Section 1.951–1 is amended by adding paragraph (a)(4) and revising the last sentence of paragraph (i) to read as follows:

§ 1.951–1 Amounts included in gross income of United States shareholders.

* * * * *

(a) * * *

(4) See § 1.958–1(d)(1) for ownership of stock of a foreign corporation through a domestic partnership for purposes of sections 951 and 951A and for purposes of any other provision that applies by reference to section 951 or 951A.

* * * * *

(i) * * * Paragraph (h) of this section applies to taxable years of domestic partnerships ending on or after May 14, 2010, but does not apply to determine the stock of a controlled foreign corporation owned (within the meaning of section 958(a)) by a United States person for taxable years of the controlled foreign corporation beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, and for taxable years of United States persons in which or with which such taxable years of the controlled foreign corporation end.

■ **Par. 3.** Section 1.951A–0 is amended by adding entries for § 1.951A–7(a), § 1.951A–7(b), and § 1.951A–7(c) to read as follows:

§ 1.951A–0 Outline of section 951A regulations.

* * * * *

§ 1.951A–7 Applicability dates.

(a) In general.
(b) High tax exclusion.
(c) Domestic partnerships.

■ **Par. 4.** Section 1.951A–2 is amended by revising paragraph (c)(1)(iii) and adding paragraph (c)(6) to read as follows:

§ 1.951A–2 Tested income and tested loss.

* * * * *

(c) * * *

(1) * * *

(iii) Gross income excluded from the foreign base company income (as defined in section 954) or the insurance income (as defined in section 953) of the corporation by reason of the exception described in section 954(b)(4) pursuant to an election under § 1.954–1(d), or a tentative gross tested income item of the corporation that qualifies for the exception described in section 954(b)(4) pursuant to an election under paragraph (c)(6) of this section,

* * * * *

(6) *Election for application of high tax exception of section 954(b)(4)*—(i) *In general.* For purposes of section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(iii) of this section, a tentative gross tested income item of a controlled foreign corporation for a CFC inclusion year qualifies for the exception described in section 954(b)(4) if—

(A) An election made under paragraph (c)(6)(v)(A) of this section is effective with respect to the controlled foreign corporation for the CFC inclusion year; and

(B) The tentative net tested income item with respect to the tentative gross tested income item was subject to foreign income taxes at an effective rate that is greater than 90 percent of the rate that would apply if the income were subject to the maximum rate of tax specified in section 11.

(ii) *Definitions*—(A) *Tentative gross tested income item*—(*1*) *In general.* A single tentative gross tested income item with respect to a controlled foreign corporation for a CFC inclusion year is the aggregate of all items of gross income attributable to a single qualified business unit (QBU) of the controlled foreign corporation in such CFC inclusion year that would be gross tested income without regard to this paragraph (c)(6) and that would be in a single tested income group (as defined in § 1.960–1(d)(2)(ii)(C)). For this purpose, a QBU is defined in section 989(a) and the regulations under that section, and a controlled foreign corporation's QBUs includes QBUs owned by the controlled foreign corporation in addition to the QBU that is the controlled foreign corporation. Therefore, a controlled foreign corporation may have multiple tentative gross tested income items.

(*2*) *Income attributable to a QBU.* Gross income is attributable to a QBU if the gross income is properly reflected on the books and records of the QBU. Such gross income must be determined under Federal income tax principles, except that the principles of § 1.904–4(f)(2)(vi) (without regard to the exclusion described in § 1.904–4(f)(2)(vi)(C)(*1*)) apply to adjust gross income of a QBU to reflect disregarded payments.

(B) *Tentative net tested income item.* A tentative net tested income item with respect to a tentative gross tested income item is determined by allocating and apportioning deductions (not including any items described in § 1.951A–2(c)(5)) to the tentative gross tested income item under the principles of § 1.960–1(d)(3) by treating each single tentative gross tested income item as gross income in a separate tested income group.

(iii) *Effective rate at which taxes are imposed.* For a CFC inclusion year of a controlled foreign corporation, the effective rate with respect to the controlled foreign corporation's tentative net tested income items is determined separately for each such item. The effective rate at which taxes are imposed on a tentative net tested income item is—

(A) The U.S. dollar amount of foreign income taxes paid or accrued with respect to the tentative net tested income item, determined by applying paragraph (c)(6)(iv) of this section; divided by

(B) The U.S. dollar amount of the tentative net tested income item, increased by the amount of foreign income taxes referred to in paragraph (c)(6)(iv) of this section.

(iv) *Taxes paid or accrued with respect to a tentative net tested income item.* For a CFC inclusion year, the amount of foreign income taxes paid or accrued by a controlled foreign corporation with respect to a tentative net tested income item of the controlled foreign corporation for purposes of this paragraph (c)(6) is the U.S. dollar amount of the controlled foreign corporation's current year taxes (as defined in § 1.960–1(b)(4)) that would be allocated and apportioned under the principles of § 1.960–1(d)(3)(ii) to the tentative net tested income item by treating such tentative net tested income item as being in a separate tested income group. If the principles of § 1.904–4(f)(2)(vi) apply to adjust the gross income of a QBU to account for disregarded payments as provided in paragraph (c)(6)(ii)(A)(*2*) of this section, the principles of § 1.904–6(a)(2) apply to allocate and apportion foreign income taxes imposed by reason of the disregarded payments. Except to the extent provided in the next sentence, the amount of foreign income taxes paid or accrued with respect to a tentative net tested income item, determined in the manner provided in this paragraph (c)(6), will not be affected by a subsequent reduction in foreign income taxes attributable to a distribution to shareholders of all or part of such income. To the extent the foreign income taxes paid or accrued by the controlled foreign corporation are reasonably certain to be returned by the foreign jurisdiction imposing such taxes to a shareholder, directly or indirectly, through any means (including, but not limited to, a refund, credit, payment, discharge of an obligation, or any other method) on a subsequent distribution to such shareholder, the foreign income taxes are not treated as paid or accrued for purposes of this paragraph (c)(6)(iv).

(v) *Rules regarding the election*—(A) *Manner of making election.* An election is made under this paragraph (c)(6)(v)(A) with respect to a controlled foreign corporation for a CFC inclusion year—

(*1*) By the controlling domestic shareholders (as defined in § 1.964–1(c)(5)), by attaching a statement to such effect with an original or amended income tax return for the U.S. shareholder inclusion year of each controlling domestic shareholder in which or with which such CFC inclusion year ends, and including any additional information required by applicable administrative pronouncements; or

(*2*) In accordance with the rules provided in forms or instructions.

(B) *Scope of election.* An election made under paragraph (c)(6)(v)(A) of this section that is effective with respect to a controlled foreign corporation for a CFC inclusion year applies with respect to each tentative gross tested income item of the controlled foreign corporation for the CFC inclusion year and is binding on all United States shareholders of the controlled foreign corporation.

(C) *Duration of election.* An election made under paragraph (c)(6)(v)(A) of this section is effective for a CFC inclusion year of a controlled foreign corporation for which the election is made and all subsequent CFC inclusion years of such corporation unless revoked by the controlling domestic shareholders of the controlled foreign corporation under paragraph (c)(6)(v)(D)(*1*) of this section.

(D) *Revocation of election*—(*1*) *In general.* Except as provided in paragraph (c)(6)(v)(D)(*2*) of this section, the election made under paragraph (c)(6)(v)(A) of this section with respect to a controlled foreign corporation for a CFC inclusion year is revoked by the controlling domestic shareholders of the controlled foreign corporation in the same manner as prescribed for an election in paragraph (c)(6)(v)(A) of this section.

(*2*) *Limitations by reason of revocation*—(*i*) *In general.* Except as provided in paragraph (c)(6)(v)(D)(*2*)(*ii*) of this section, if an election with respect to a controlled foreign corporation for a CFC inclusion year is revoked under paragraph (c)(6)(v)(D)(*1*) of this section, a new election cannot be made under paragraph (c)(6)(v)(A) of this section with respect to the controlled foreign corporation for any CFC inclusion year that begins within sixty months following the close of the CFC inclusion year for which the previous election was revoked, and such subsequent election cannot be revoked under paragraph (c)(6)(v)(D)(*1*) of this section with respect to the controlled foreign corporation for any CFC inclusion year that begins within sixty months following the close of the CFC inclusion year for which the subsequent election was made.

(*ii*) *Exception for change of control.* The Commissioner may permit a controlled foreign corporation to make an election under paragraph (c)(6)(v)(A) of this section or revoke an election under paragraph (c)(6)(v)(D)(*1*) of this section with respect to any CFC inclusion year within the sixty-month period described in paragraph (c)(6)(v)(D)(*2*)(*i*) of this section if more than 50 percent of the total combined voting power of all classes of the stock of the controlled foreign corporation entitled to vote as of the beginning of such CFC inclusion year are owned (within the meaning of section 958(a)) by persons that did not own any interests in the controlled foreign corporation as of the close of the CFC inclusion year for which the prior election or revocation with respect to the controlled foreign corporation became effective. For purposes of the preceding sentence, a person includes any person bearing a relationship described in section 267(b) or 707(b)(1) with respect to the person.

(E) *Rules applicable to controlling domestic shareholder groups*—(*1*) *In general.* In the case of a controlled foreign corporation that is a member of a controlling domestic shareholder group, an election is made under paragraph (c)(6)(v)(A) of this section or revoked under paragraph (c)(6)(v)(D)(*1*) of this section with respect to each member of the controlling domestic shareholder group (including any member that joins the controlling domestic shareholder group after the election or revocation) and the rules in paragraphs (c)(6)(v)(A) through (D) of this section apply by reference to the controlling domestic shareholder group.

(*2*) *Definition of controlling domestic shareholder group.* For purposes of paragraph (c)(6)(v)(E)(*1*) of this section, the term *controlling domestic shareholder group* means two or more controlled foreign corporations (each a *member*) if more than 50 percent of the total combined voting power of all classes of the stock of each corporation is owned (within the meaning of section 958(a)) by the same controlling domestic shareholder or, if no single controlling domestic shareholder owns (within the meaning of section 958(a)) more than 50 percent of the total combined voting power of all classes of the stock of each corporation, more than 50 percent of the total combined voting power of all classes of the stock of each corporation is owned (within the meaning of section 958(a)) by the same controlling domestic shareholders and each controlling domestic shareholder owns (within the meaning of section 958(a)) the same percentage of stock in each controlled foreign corporation. For purposes of the preceding sentence, a controlling domestic shareholder includes any person bearing a relationship described in section 267(b) or 707(b)(1) to the controlling domestic shareholder.

(vi) *Example.* The following example illustrates the application of this paragraph (c)(6).

(A) *Example: Effect of disregarded payments between QBUs*—(*1*) *Facts*—(*i*) FP, a controlled foreign corporation organized in Country A, conducts a trade or business in Country A (the Country A Business) and reflects items of income, gain, loss, and expense attributable to the Country A Business on the books and records of FP's home office. Under § 1.989(a)–1(b)(2)(i)(A), FP is a QBU. FP's functional currency is the U.S. dollar. FP has a calendar year taxable year in both the United States and Country A. An election is made under paragraph (c)(6)(v)(A) of this section that is effective for FP's CFC inclusion year.

(*ii*) FP owns FDE, a Country B disregarded entity (within the meaning of § 1.904–4(f)(3)(i)). FDE conducts activities in Country B that constitute a trade or business within the meaning of § 1.989(a)–1(c) (the Country B Business), and reflects items of income, gain, loss, and expense attributable to the Country B Business on the books and records of FDE. Under § 1.989(a)–1(b)(2)(ii)(B), the Country B Business conducted through FDE is a QBU. The Country B Business's functional currency is the U.S. dollar. FDE has a calendar year taxable year in Country B.

(*iii*) On Date A in Year 1, FDE accrues $100x of interest income from X, an unrelated third party, and reflects the accrual on the books and records of the Country B business. FP excludes the $100x from foreign personal holding company income by reason of section 954(h). Subsequently, on Date B in Year 1, FDE accrues and pays $20x of interest to FP. FP reflects the interest income item on the books and records of the Country A Business. FDE reflects the $20x of interest expense on the books and records of the Country B Business.

(*iv*) Country A imposes no tax on income. Country B imposes a 25% tax on income. For Country B income tax purposes, FDE (which is not disregarded under Country B income tax principles) recognizes $80x of taxable income ($100x interest income, less a $20x deduction for the interest paid to FP). Accordingly, FDE incurs a Country B income tax liability with respect to Year 1, the U.S. dollar amount of which is $20x. For Federal income tax purposes, if FDE were not a disregarded entity (within the meaning of § 1.904–4(f)(3)(i)), FP would recognize $20x of income in Year 1, and FDE would recognize $80x of taxable income in Year 1. Other than the $20x expense accrued with respect to the income tax imposed by Country B, FP incurs no deductions in Year 1 for Federal income tax purposes.

(*2*) *Analysis*—(*i*) Under paragraph (c)(6)(ii)(A)(*1*) of this section, a separate tentative gross tested income item must be determined with respect to FP's Country A Business and Country B Business (each of which is a QBU). To determine the separate tentative gross tested income items with respect to its Country A Business and Country B Business, FP must determine the gross income that is attributable to the Country A Business and the Country B Business under paragraph (c)(6)(ii)(A)(*2*) of this section. Without regard to the $20x interest payment from FDE to FP, gross income attributable to the Country A Business would be $0 (that is, $20x of interest income reflected on the books and records of the Country A Business, reduced by $20x attributable to a payment that is disregarded for Federal income tax purposes). Similarly, without regard to the $20x interest payment from FDE to FP, gross income attributable to the Country B Business would be $100x (that is, $100x of interest income reflected on the books and records of the Country B Business, unreduced by the $20x payment from FDE to FP). However, the $20x payment from FDE to FP is a disregarded payment within the meaning of § 1.904–4(f)(3)(ii), and would, under the principles of § 1.904–4(f)(2)(vi) (without regard to the exclusion described in § 1.904–4(f)(2)(vi)(C)(*1*)), adjust the gross income of the Country A Business from $0 to $20x and the gross income of the Country B Business from $100x to $80x (in each case, by virtue of the $20x disregarded interest payment from FDE to FP). Accordingly, FP's tentative gross tested income attributable to the Country A Business is $20x and its tentative gross tested income attributable to the Country B Business is $80x.

(*ii*) Under paragraph (c)(6)(ii)(B) of this section, because there are no deductions allocated or apportioned under § 1.960–1(d)(3) to the tentative gross tested income items of the Country A Business, FP's tentative net tested income item attributable to the Country A Business is $20x. Taking into account the $20x deduction for Country B income taxes that are allocable to the Country B Business under § 1.960–1(d)(3), FP's tentative net tested income item attributable to the Country B Business is $60x under paragraph (c)(6)(ii)(B) of this section (tentative gross tested income of $80x less the $20x deduction).

(*iii*) Under paragraphs (c)(6)(iii) and (iv) of this section, for Year 1 (a CFC inclusion year of FP), the effective rate with respect to FP's $60x tentative net tested income item attributable to its Country B Business is 25%: $20x (the U.S. dollar amount of the Country B taxes accrued with respect to FP's tentative tested net income item attributable to the Country B Business) divided by $80x (the U.S. dollar amount of FP's $60x tentative net tested income item, increased by the $20x amount of Country B income taxes accrued with respect to that tentative net tested income item), expressed as a percentage. Therefore, FP's tentative net tested income item attributable to the Country B Business was subject to foreign income taxes at an effective rate (25%) that is greater than 18.9% (which is 90% of the rate that would apply if the income were subject to the maximum rate of tax specified in section 11, which is 21%). Accordingly, the requirement of paragraph (c)(6)(i)(B) of this section is satisfied with respect to FP's tentative gross tested income item attributable to the Country B Business in Year 1. Further, the requirement of paragraph (c)(6)(i)(A) of this section is satisfied because an election described in paragraph (c)(6)(v)(A) of this section was made with respect to FP for Year 1. Accordingly, FP's $80x item of tentative gross tested income attributable to its Country B Business qualifies for the high tax exception of section 954(b)(4) under paragraph (c)(6)(i) of this section.

(*iv*) FP's $20x item of tentative net tested income attributable to its Country A Business is not subject to foreign income tax, and therefore does not satisfy the requirement of paragraph (c)(6)(i)(B) of this section. Accordingly, FP's $20x item of tentative gross tested income attributable to the Country A Business does not qualify for the high tax exception of section 954(b)(4) under paragraph (c)(6)(i) of this section.

■ **Par. 5.** Section 1.951A–7 is revised to read as follows:

§ 1.951A–7 Applicability dates.

(a) *In general.* Except as otherwise provided in this section, sections 1.951A–1 through 1.951A–6 apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

(b) *High tax exclusion.* Section 1.951A–2(c)(1)(iii) and (c)(6) applies to taxable years of foreign corporations beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

(c) *Domestic partnerships.* Section 1.951A–1(e) applies to taxable years of foreign corporations beginning after December 31, 2017, and before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, and to taxable years of United States persons in which or with which such taxable years of foreign corporations end.

■ **Par. 6.** Section 1.954–1 is amended by:

■ 1. Adding ''or'' to the end of paragraph (c)(1)(iii)(A)(*2*)(*ii*).

■ 2. Removing and reserving paragraphs (c)(1)(iii)(A)(*2*)(*iii*) and (*iv*).

■ 3. Adding paragraphs (c)(1)(iii)(A)(*3*) and (c)(1)(iv).

■ 4. Removing the language ''foreign base company oil related income, as defined in section 954(g), or'' in the second sentence of paragraph (d)(1) introductory text.

■ 5. Adding a new sentence after the fourth sentence in paragraph (d)(1) introductory text.

■ 6. Removing the language ''imposed by a foreign country or countries'' in paragraph (d)(1)(ii).

■ 7. Removing the language ''in a chain of corporations through which a distribution is made'' in the first sentence in paragraph (d)(2) introductory text.

■ 8. Removing the language ''(or deemed paid or accrued)'' in paragraph (d)(2)(i).

■ 9. Revising the heading and the first sentence of paragraph (d)(3)(i).

■ 10. Removing the second sentence of paragraph (d)(3)(i).

■ 11. Removing and reserving paragraphs (d)(4)(iii) and (d)(7).

The additions and revisions read as follows:

§ 1.954–1 Foreign base company income.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(A) * * *

(*3*) *Amount of a single item.* For purposes of paragraph (c)(1)(iii)(A) of this section, the aggregate amount from all transactions that falls within a single separate category (as defined in § 1.904–5(a)(4)(v)) and is described in paragraph (c)(1)(iii)(A)(*1*)(*i*) of this section is a single item of income. Similarly, the aggregate amount from all transactions that falls within a single separate category (as defined in § 1.904–5(a)(4)(v)) and is described in each one of paragraphs (c)(1)(iii)(A)(*1*)(*ii*) through (c)(1)(iii)(A)(*1*)(*v*) of this section is in each case a separate single item of income. The same principles apply for transactions described in each one of paragraphs (c)(1)(iii)(A)(*2*)(*i*) through (*v*) of this section.

* * * * *

(iv) *Treatment of deductions or loss attributable to disqualified basis.* For purposes of paragraph (c)(1)(i) of this section (and in the case of insurance income, paragraph (a)(6) of this section), in determining the amount of a net item of foreign base company income or insurance income, deductions or loss described in § 1.951A–2(c)(5) are not allocated and apportioned to gross foreign base company income or gross insurance income.

(d) * * *

(1) * * * For rules concerning the application of the high tax exception of sections 954(b)(4) and 951A(c)(2)(A)(i)(III) to tentative gross tested income items, see § 1.951A–2(c)(1)(iii) and (c)(6). * * *

* * * * *

(3) * * *

(i) *In general.* The amount of foreign income taxes paid or accrued by a controlled foreign corporation with respect to a net item of income for purposes of section 954(b)(4) and this paragraph (d) is the U.S. dollar amount of the controlled foreign corporation's current year taxes (as defined in § 1.960–1(b)(4)) that are allocated and apportioned under § 1.960–1(d)(3)(ii) to the subpart F income group (as defined in § 1.960–1(d)(2)(ii)(B)) that corresponds with the net item of income. * * *

* * * * *

■ **Par. 7.** Section 1.954–1, as proposed to be amended at 83 FR 63200 (December 7, 2018), is further amended by:

■ 1. Removing and reserving paragraph (d)(3)(ii).

■ 2. Redesignating paragraphs (h)(1) and (h)(2) as paragraphs (h)(2) and (h)(3), respectively.

■ 3. Adding a new paragraph (h)(1).

■ 4. Removing the language ''Paragraphs (d)(3)(i) and (ii)'' in newly redesignated paragraph (h)(2) and adding ''The last two sentences in paragraph (d)(3)(i)'' in its place.

The addition reads as follows:

§ 1.954–1 Foreign base company income.

* * * * *

(h) * * *

(1) *Paragraphs (c)(1)(iii)(A)(3) and (c)(1)(iv) of this section and portion of paragraph (d)(3)(i) of this section.* Paragraphs (c)(1)(iii)(A)(*3*) and (c)(1)(iv) of this section and the first sentence of paragraph (d)(3)(i) of this section apply to taxable years of a controlled foreign corporation beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

■ **Par. 8.** Section 1.956–1, as amended May 23, 2019, at 84 FR 23717, effective July 22, 2019, is further amended by revising the first sentence of paragraph (g)(4) to read as follows:

§ 1.956–1 Shareholder's pro rata share of the average of the amounts of United States property held by a controlled foreign corporation.

* * * * *

(g) * * *

(4) Paragraphs (a)(2) and (3) of this section apply to taxable years of controlled foreign corporations beginning on or after July 22, 2019, and to taxable years of a United States shareholder in which or with which such taxable years of the controlled foreign corporations end, but the last sentence of paragraph (a)(2)(i) and paragraphs (a)(2)(iii) and (a)(3)(iv) of this section do not apply to taxable years of controlled foreign corporations beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, and to taxable years of a United States shareholder in which or with which such taxable years of the controlled foreign corporations end. * * *

* * * * *

■ **Par. 9.** Section 1.958–1 is amended by:

■ 1. Redesignating paragraph (d) as paragraph (e).

■ 2. Adding a new paragraph (d).

The addition reads as follows:

§ 1.958–1 Direct and indirect ownership of stock.

* * * * *

(d) *Stock owned through domestic partnerships*—(1) *In general.* Except as otherwise provided in paragraph (d)(2) of this section, for purposes of section 951 and section 951A, and for purposes of any other provision that applies by reference to section 951 or section 951A, a domestic partnership is not treated as owning stock of a foreign corporation within the meaning of section 958(a). When the preceding sentence applies, a domestic partnership is treated in the same manner as a foreign partnership under section 958(a)(2) and paragraph (b) of this section for purposes of determining the persons that own stock of the foreign corporation within the meaning of section 958(a).

(2) *Non-application for determination of status as United States shareholder or controlled foreign corporation.* Paragraph (d)(1) of this section does not apply for purposes of determining whether any United States person is a United States shareholder (as defined in section 951(b)), whether any United States shareholder is a controlling domestic shareholder (as defined in § 1.964–1(c)(5)), or whether any foreign corporation is a controlled foreign corporation (as defined in section 957(a)).

(3) *Examples.* The following examples illustrate the application of this paragraph (d).

(i) *Example 1*—(A) *Facts.* USP, a domestic corporation, and Individual A, a United States citizen unrelated to USP, own 95% and 5%, respectively, of PRS, a domestic partnership. PRS owns 100% of the single class of stock of FC, a foreign corporation.

(B) *Analysis*—(*1*) *CFC and United States shareholder determinations.* Under paragraph (d)(2) of this section, the determination of whether PRS, USP, and Individual A (each a United States person) are United States shareholders of FC and whether FC is a controlled foreign corporation is made without regard to paragraph (d)(1) of this section. PRS, a United States person, owns 100% of the total combined voting power or value of the FC stock within the meaning of section 958(a). Accordingly, PRS is a United States shareholder under section 951(b), and FC is a controlled foreign corporation under section 957(a). USP is a United States shareholder of FC because it owns 95% of the total combined voting power or value of the FC stock under sections 958(b) and 318(a)(2)(A). Individual A, however, is not a United States shareholder of FC because Individual A owns only 5% of the total combined voting power or value of the FC stock under sections 958(b) and 318(a)(2)(A).

(*2*) *Application of sections 951 and 951A.* Under paragraph (d)(1) of this section, for purposes of sections 951 and 951A, PRS is not treated as owning (within the meaning of section 958(a)) the FC stock; instead, PRS is treated in the same manner as a foreign partnership for purposes of determining the FC stock owned by USP and Individual A under section 958(a)(2) and paragraph (b) of this section. Therefore, for purposes of sections 951 and 951A, USP is treated as owning 95% of the FC stock under section 958(a), and Individual A is treated as owning 5% of the FC stock under section 958(a). USP is a United States shareholder of FC, and therefore USP determines its income inclusions under section 951 and 951A based on its ownership of FC stock under section 958(a). However, because Individual A is not a United States shareholder of FC, Individual A does not have an income inclusion under section 951 with respect to FC or a pro rata share of any amount of FC for purposes of section 951A.

(ii) *Example 2*—(A) *Facts.* USP, a domestic corporation, and Individual A, a United States citizen, own 90% and 10%, respectively, of PRS1, a domestic partnership. PRS1 and Individual B, a nonresident alien individual, own 90% and 10%, respectively, of PRS2, a domestic partnership. PRS2 owns 100% of the single class of stock of FC, a foreign corporation. USP, Individual A, and Individual B are unrelated to each other.

(B) *Analysis*—(*1*) *CFC and United States shareholder determination.* Under paragraph (d)(2) of this section, the determination of whether PRS1, PRS2, USP, and Individual A (each a United States person) are United States shareholders of FC and whether FC is a controlled foreign corporation is made without regard to paragraph (d)(1) of this section. PRS2 owns 100% of the total combined voting power or value of the FC stock within the meaning of section 958(a). Accordingly, PRS2 is a United States shareholder under section 951(b), and FC is a controlled foreign corporation under section 957(a). Under sections 958(b) and 318(a)(2)(A), PRS1 is treated as owning 90% of the FC stock owned by PRS2. Accordingly, PRS1 is a United States shareholder under section 951(b). Further, under section 958(b)(2), PRS1 is treated as owning 100% of the FC stock for purposes of determining the FC stock treated as owned by USP and Individual A under section 318(a)(2)(A). Therefore, USP is treated as owning 90% of the FC stock under section 958(b) (100% x 100% x 90%), and Individual A is treated as owning 10% of the FC stock under section 958(b) (100% x 100% x 10%). Accordingly, both USP and Individual A are United States shareholders of FC under section 951(b).

(*2*) *Application of sections 951 and 951A.* Under paragraph (d)(1) of this section, for purposes of sections 951 and 951A, PRS1 and PRS2 are not treated as owning (within the meaning of section 958(a)) the FC stock; instead, PRS1 and PRS2 are treated in the same manner as foreign partnerships for purposes of determining the FC stock owned by USP and Individual A under section 958(a)(2) and paragraph (b) of this section. Therefore, for purposes of determining the amount included in gross income under sections 951 and 951A, USP is treated as owning 81% (100% x 90% x 90%) of the FC stock under section 958(a), and Individual A is treated as owning 9% (100% x 90% x 10%) of the FC stock under section 958(a). Because USP and Individual A are both United States shareholders of FC, USP and Individual A determine their respective inclusions under sections 951 and 951A based on their ownership of FC stock under section 958(a).

(4) *Applicability date.* Paragraphs (d)(1) through (3) of this section apply to taxable years of foreign corporations beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, and to taxable years of United States persons in which or with which such taxable years of foreign corporations end. For taxable years that precede the taxable years described in the preceding sentence, a domestic partnership may apply those paragraphs to taxable years of a foreign corporation beginning after December 31, 2017, and to taxable years of the domestic partnership in which or with which such taxable years of the foreign corporation end, provided that the partnership, its partners that are United States shareholders of the foreign corporation, and other domestic partnerships that bear relationships described in section 267(b) or 707(b) to the partnership (and their United States shareholder partners) consistently apply paragraph (d) of this section with respect to all foreign corporations whose stock the domestic partnerships own within the meaning of section 958(a) (determined without regard to paragraph (d)(1) of this section).

* * * * *

■ **Par. 10.** Section 1.1502–51 is amended by revising the last sentence in paragraph (b) and adding paragraph (g)(2) to read as follows:

§ 1.1502–51 Consolidated section 951A.

* * * * *

(b) * * * In addition, see § 1.958–1(d).

* * * * *

(g) * * *

(2) *The last sentence of paragraph (b) of this section.* The last sentence of paragraph (b) of this section applies to taxable years of United States shareholders described in § 1.958–1(d)(4).

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–12436 Filed 6–14–19; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0419]

RIN 1625–AA00

Safety Zone; USA Triathlon Age Group National Championships Lake Erie, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain waters of Lake Erie during the USA Triathlon National Championships. This action is necessary to provide for the safety of life on the navigable waters near Edgewater Park, Cleveland, OH during the swim events of the multiple triathlons over the course of three days. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Buffalo or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 22, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0419 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Ryan Junod, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–6004, email *D09-SMB-SECBuffalo-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, Purpose, and Legal Basis

On January 29, 2019, USA Triathlon notified the Coast Guard that it will be conducting the USA Triathlon Age Group National Championships from 10:00 a.m. to 1:30 p.m. on August 09, 2019, from 5:00 a.m. to 5:30 p.m. on August 10, 2019, and from 5:00 a.m. to 12:00 p.m. on August 11, 2019. The swim portion of the multiple triathlon events will be held off Edgewater Park in Lake Erie, Cleveland, OH. Hazards from swim events include participants swimming in an area that has a high amount of recreational vessel traffic and interfering with vessels intending to operate in that location, as well as swimming within approaches to public and private marinas. The Captain of the Port Buffalo determined that potential hazards associated with the swim events would be a safety concern for anyone intending to participate in this event or for vessels that operate in their vicinity.

The purpose of this rulemaking is to protect the safety of the event participants and transiting vessels on specified waters of Lake Erie before, during and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The Captain of the Port Buffalo proposes to establish a safety zone from 9:45 a.m. through 1:45 p.m. on August 09, 2019, from 4:45 a.m. through 5:45 p.m. on August 10, 2019, and from 4:45 a.m. through 12:15 p.m. on August 11, 2019. The safety zone would cover all navigable waters of Lake Erie, off of Edgewater Park, Cleveland OH, inside an area starting on shore at position 41°29′16″ N, 081°44′49″ W extending NW in a straight line position to 41°29′34″ N, 081°45′02″ W then NE in a straight line to position 41°29′43″ N, 081°44′31″ W, and SE back to shore at position 41°29′28″ N, 081°44′22″ W (NAD 83). The duration of the zone is intended to ensure the safety of vessels, participants, and these navigable waters before, during, and after the schedule events over the course of the three days. No vessel or person would be permitted to enter the safety zone without obtaining permission from the Captain of the Port or a designated representative.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget, and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the conclusion that this rule is not a significant regulatory action. 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 for a relatively short time. Also, the safety zone is designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Additionally, vessels may still transit through the safety zone when permitted by the Captain of the Port or a designated representative.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination 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 proposed rule involves a safety zone lasting 3 days that would prohibit entry within certain waters of Lake Erie, off of Edgewater Park, Cleveland, OH. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 proposes to amend 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: 46 U.S.C. 70034, 70051; 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.T09–0419 to read as follows:

§ 165.T09–0419 Safety Zone; USA Triathlon Age Group National Championships; Lake Erie, Cleveland, OH.

(a) Location. The safety zone will encompass all waters of Lake Erie, off of Edgewater Park, Cleveland OH, inside an area starting on shore at position 41°29′16″ N, 081°44′49″ W extending NW in a straight line position to 41°29′34″ N, 081°45′02″ W then NE in a straight line to position 41°29′43″ N, 081°44′31″ W, and SE back to shore at position 41°29′28″ N, 081°44′22″ W (NAD 83).

(b) Enforcement Period. This rule will be enforced from 9:45 a.m. through 1:45 p.m. on August 09, 2019, from 4:45 a.m. through 5:45 p.m. on August 10, 2019, and from 4:45 a.m. through 12:15 p.m. on August 11, 2019.

(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 Buffalo 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 Buffalo or a designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo 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 Buffalo or an on-scene representative to obtain permission to do so. The Captain of the Port Buffalo 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 Buffalo, or an on-scene representative.

Dated: June 17, 2019.

Joseph S. Dufresne,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2019–13181 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2018–4]

Copyright Office Fees

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: As part of its ongoing fee study, the Copyright Office proposes limited revisions to its previously proposed fee schedule relating to document recordation and new prospective group registration options. The proposed modifications would adjust the fee structure for document recordation from a fee formula based on the number of titles to a formula based on the number of works and alternate titles and registration numbers to which a document pertains, and make certain other clarifications. The Office is also noticing its intention to issue fees for its previously-proposed group registration options for short online literary works and for works contained on an album of music. The Office is providing an opportunity to the public to comment on these specific proposed changes before the Office's fee schedule is submitted to Congress.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on July 22, 2019.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office's website at *https://www.copyright.gov/rulemaking/feestudy2018/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* or Jalyce Mangum, Attorney-Advisor, by email at *jmang@copyright.gov,* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Fees Pertaining to Document Recordation

On May 24, 2018, the Copyright Office issued a notice of proposed rulemaking proposing a new fee schedule for Copyright Office services (the ''2018 NPRM'').[1] Included in the proposal were revised fees for recording documents with the Office, including transfers of copyright ownership and notices of termination.[2] As mentioned in that notice, the Copyright Office is developing a new electronic system through which the public will be able to submit documents for recordation online.[3] The Office is also in the process of generally modernizing its recordation rules and practices.[4] In evaluating the Office's current recordation practices, the Office has now tentatively concluded that it should adjust the structure of its fees as detailed in the 2018 NPRM. Specifically, the Office proposes to switch from a fee formula based on the number of titles to a fee formula based on the number of *works,* which are identified by one title and/or registration number, and the number of *alternate identifiers* (alternate titles and registration numbers) to which a document pertains.

The fee proposed in the 2018 NPRM, like the current recordation filing fee, is comprised of (1) a base fee that includes one title, and (2) a ''titles fee'' for any additional titles beyond the first (sometimes called ''alternate titles'').[5] Under this structure, the Office calculates the appropriate filing fee by counting the total number of title names for works to which the document pertains. For example, a single work for which four different names are provided would have a title count of four for fee purposes (*e.g.,* ''Harold & Kumar 2,'' also known as ''Harold and Kumar 2,'' also known as ''Untitled Harold and Kumar sequel,'' also known as ''Harold & Kumar go to Amsterdam'' [6]). If Copyright Office registration numbers are also provided for works identified in a document (whether through an electronic title list or otherwise), the titles fee is the same, even though it costs the Office more to process the document because of the extra work involved for staff to manually index those numbers when no electronic title list is provided.[7] Thus, the current titles fee does not recognize the added benefit remitters receive by providing registration numbers in addition to title names.[8] Similarly, no title-related fee is collected where a document only identifies the works to which it pertains by using registration numbers, even though the remitter of a document indexed by registration numbers may benefit from the same constructive notice as a remitter recording a document that identifies works by their titles.

The Office now proposes to retain the group and tier structures previously proposed, but to base them on the number of *works,* which are identified by one title and/or registration number, and *alternate identifiers* (alternate titles and registration numbers) related to a document, rather than the number of titles. Under this structure, the first title and/or first registration number provided for a particular work constitutes a *work.* In other words, if a remitter describes a work using (i) only a single title name, (ii) only a single registration number, or (iii) both one title name *and* one registration number, then each description would count as one ''work'' for fee purposes.[9] In particular, this change is intended to encourage remitters to include a registration number that matches to a title, by clarifying that it will be indexed and at no additional cost. Where a work is identified by multiple title names or multiple registration numbers, every additional title name and additional registration number provided beyond the first would count as an *alternate identifier.* Thus, if a remitter describes a work using one title name, one registration number, and three additional title names, then the fee would be equal to the base fee plus the fee for three alternate identifiers.[10]

By adjusting the fee structure, the Office hopes to encourage the recordation of alternative titles that a remitter submits for the record, and, if applicable, any additional registration numbers that may pertain to the same work. As a rule, the Office issues only one basic registration for a work. However, there are exceptions that permit multiple registrations numbers for one work. For example, if a work was previously registered as an unpublished work, the Office will issue an additional registration for the first published edition of that work, even if the published version ''is substantially the same as the unpublished version.'' [11] Additionally, where someone other than the author is identified as copyright claimant in a registration, the Office will issue an additional registration for the same work to the author or joint author who seeks to name him or herself as the claimant.[12] A remitter may also have multiple registration numbers that pertain to renewal and supplementary registrations.

This change is expected to better equalize the fee structure for document recordation without significantly altering the fees that most remitters pay. In practice, the number of remitters that submit documents for recordation with multiple registration numbers for each work or documents that only contain registration numbers without any titles is relatively small, meaning that this proposed fee change should not impact most filers.[13] Finally, the differences between this proposed fee schedule and

[1] Copyright Office Fees, 83 FR 24054 (May 24, 2018). 163 comments were filed in response to the 2018 NPRM, and the Office's careful consideration of those comments will be reflected in its forthcoming study submitted to Congress pursuant to 17 U.S.C. 701(b), as well as any eventual adjustment instituted to the fee schedule. The focus of this supplemental NPRM, however, is on additional, targeted changes to the fee schedule, and the Office is not currently seeking additional comment on those proposed changes previously noticed in 2018.

[2] *Id.* at 24061.

[3] *Id.*

[4] *See* Modernizing Copyright Recordation, 82 FR 52213 (Nov. 13, 2017); Modernizing Copyright Recordation, 82 FR 22771 (May 18, 2017).

[5] 83 FR at 24061; 37 CFR 201.3(c)(18).

[6] *See* Document Number V3548D204 (2007).

[7] An electronic title list is a list of certain indexing information about the works to which a document pertains, such as their titles, types, registration numbers, and authorship information.

[8] *Cf.* Fees for Electronic Recordation and Notices of Intention To Obtain a Compulsory License, 82 FR 52221, 52222–23 (Nov. 13, 2017) (''Under this scheme, larger filers submitting documents with a larger number of titles pay a higher fee for the added benefit they receive (when the fee is viewed on a per-title basis) to offset the lower total fee for smaller filers with fewer titles.'').

[9] For example, a recorded work would be calculated as a single fee regardless of whether it was identified as ''Harold and Kumar 2,'' ''PAu003086781,'' or ''Harold and Kumar 2; PAu003086781.''

[10] For example, if a document that pertains to one work (''Harold & Kumar 2''), and contains one primary title (''Harold & Kumar 2''), one corresponding registration number (''PAu003086781''), and three alternate titles (''Harold and Kumar 2,'' ''Untitled Harold and Kumar sequel,'' and ''Harold & Kumar go to Amsterdam''), the fee would be equal to the base fee plus the fee for three alternate identifiers.

[11] 17 U.S.C. 408(e) (''Registration for the first published edition of a work previously registered in unpublished form may be made even though the work as published is substantially the same as the unpublished version.''); 37 CFR 202.3(b)(11)(i).

[12] 37 CFR 202.3(b)(11)(ii) & n.2. This policy aligns ''with the fundamental thrust of the [Copyright Act of 1976] in identifying copyright, and the origin of all rights comprised in a copyright, with the author.'' Applications for Registration of Claim to Copyright Under Revised Copyright Act, 42 FR 48944, 48946 (Sept. 26, 1977).

[13] The current fee structure already charges remitters for providing additional titles for a work.

the proposal set forth in the 2018 NPRM relate to the description of the base fee and of ''additional works and alternative identifiers''; the actual proposed monetary amounts remain the same.

The following examples illustrate the fee calculation under the proposed structure:

- If a document pertains to 20 works, and contains one title for each work, the fee would be equal to the base fee plus the fee for 19 additional works.
- If a document pertains to 20 works, and contains one registration number for each work, the fee would be equal to the base fee plus the fee for 19 additional works.
- If a document pertains to 20 works, and contains one title *and* one registration number for each work, the fee would still be equal to the base fee plus the fee for 19 additional works.
- If a document pertains to 20 works, and contains 20 primary titles, 20 corresponding registration numbers, and 10 alternate titles, the fee would be equal to the base fee plus the fee for 19 additional works and 10 alternate identifiers.[14]
- If a document pertains to 20 works, and contains 20 primary titles, 20 corresponding registration numbers, 10 alternate titles, and 10 additional registration numbers, the fee would be equal to the base fee plus the fee for 19 additional works and 20 alternate identifiers.[15]

The Office recognizes the general benefit to the public in having a more robust records catalog that includes more registration numbers for recorded documents, and does not wish for any new fees to overburden remitters and deter them from providing registration numbers. At the same time, the Office seeks to better recoup its costs and believes that those costs should be more equitably allocated among remitters based on the size of their filing. The Office is thus considering making changes to the fee schedule for recordation and related services to appear at 37 CFR 201.3(c):

Recordation and related services	Current fees ($)	Proposed fees ($)
(1) Recordation of a document, including a notice of termination and a notice of intention to enforce a restored copyright:		
(i) Base fee (includes 1 work identified by 1 title and/or registration number):		
Paper	105	125
Electronic	New fee	95
(ii) Additional transfer (per transfer) (for documents recorded under 17 U.S.C. 205)	105	95
(iii) Additional works and alternate identifiers:		
Paper (per group of 10 or fewer additional works and alternate identifiers)	35	60
Electronic:		
1 to 50 additional works and alternate identifiers	60	60
51 to 500 additional works and alternate identifiers	225	225
501 to 1,000 additional works and alternate identifiers	390	390
1,001 to 10,000 additional works and alternate identifiers	555	555
10,001 or more additional works and alternate identifiers	5,500	5,500
(iv) Correction of online Public Catalog data due to erroneous electronic title submission (per work or alternate identifier).	7	7
(2) To calculate the fee specified by paragraph (1), for each work identified in a document: (a) The first title and/or first registration number provided for that particular work constitutes a *work;* and (b) each additional title and registration number provided for that particular work beyond the first constitutes an *alternate identifier.*		
(3) Special handling surcharge for recordation of documents	550	700

Additionally, the Office further proposes to extend to notices of termination the previously proposed reduced fees for electronic submission. It was a technical oversight not to include that proposal in the 2018 NPRM. Although electronic title lists may not currently be submitted with notices of termination, remitters will eventually be able to submit notices through the Office's electronic recordation system, and authors seeking to record their notices of termination should get the same discount for electronic filing offered to remitters of other types of recordable documents.[16]

II. Fees Pertaining to New Group Registration Options

The Office proposes fees for new group registration options that have recently been or will soon be established through rulemakings. The Office has recently proposed new group registration options for short online literary works[17] and for musical works, sound recordings, and certain other works contained on an album of music.[18] Under the proposed rules, applicants will be required to submit their claims through the electronic registration system, and they will be required to use the Standard Application. For these options, the Office proposes a filing fee equal to the fee that currently applies to any claim submitted on the Standard Application. In the 2018 NPRM, the Office proposed to increase this fee from $55 to $75.[19] If that proposal is adopted, the new fee will apply to any claim submitted on the Standard Application, including claims submitted under these new group registration options. Although these proposed group registration options will follow the Standard Application procedures, to avoid confusion, the Office proposes enumerating these new group options

[14] For example, if a document that pertains to three works (''Harold and Kumar,'' ''Harold and Kumar 2,'' and ''Harold and Kumar 3''), and contains three primary titles, three corresponding registration numbers, and nine alternate titles, the fee would be equal to the base fee plus the fee for two works and nine alternate identifiers.

[15] For example, if a document that pertains to three works (''Harold and Kumar,'' ''Harold and Kumar 2,'' and ''Harold and Kumar 3''), and contains three primary titles, three corresponding registration numbers, nine alternate titles, and three alternate registration numbers for the unpublished versions of the works (a rare occurrence for motion pictures, but used to illustrate the structure), the fee would be equal to the base fee plus the fee for two works and 12 alternate identifiers.

[16] The Office did not include in the 2018 NPRM the existing fee for correcting data in the public catalog that is incorrect due to erroneous information contained in an electronic title list. That was also a technical oversight, and that fee has now been added to the proposed fee schedule without change.

[17] Group Registration of Short Online Literary Works, 83 FR 65612 (Dec. 21, 2018).

[18] 84 FR 22762 (May 20, 2019).

[19] 83 FR 24054, 24057 (May 24, 2018).

separately on its fee schedule and is now noticing them for public comment. Currently, the Office does not have the ability to charge differential prices when claims in multiple works are submitted on the Standard Application. However, the Office will consider different pricing models for such claims as it begins to develop the technical and legal requirements for its next-generation registration system.[20]

As such, the Office is considering a new fee for new group registration options for short online literary works and for musical works, sound recordings, and certain other works contained on an album to appear at 37 CFR 201.3(c):

Group registrations	Current fees ($)	Proposed fees ($)
* * * * * * *		
(10) Group registration of short online literary works	New Fee	75
(11) Group registration of musical works, sound recordings, and certain other works contained on an album.	New Fee	75

The Office welcomes comment on these proposed changes.

Dated: June 14, 2019.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2019–12976 Filed 6–20–19; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2019–0306; FRL–9995–26–Region 6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; New Mexico and Albuquerque-Bernalillo County; Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the section 111(d) Plan submitted by the New Mexico Environment Department (NMED) on May 25, 2017, to regulate landfill gas and its components, including methane, from existing municipal solid waste (MSW) landfills. The Plan is submitted to implement and enforce the Emissions Guidelines (EG) for existing landfills in New Mexico, except Albuquerque-Bernalillo County. We are also proposing to approve revisions to the section 111(d) Plan submitted by the New Mexico Environment Department (NMED) on behalf of the Albuquerque-Bernalillo County Air Quality Control Board on May 24, 2017, to implement and enforce the EG for existing MSW landfills in Albuquerque and Bernalillo County. The EG requires States to develop plans to reduce air emissions from all affected MSW landfills within their jurisdiction.

DATES: Written comments must be received on or before July 22, 2019.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2019–0306 at *https://www.regulations.gov* or via email to *Shar.alan@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (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. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Alan Shar 214–665–6691, *Shar.alan@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1201 Elm Street, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, EPA Region 6 Office, State Planning Implementation Branch, 1201 Elm Street, Dallas, TX 75270, 214–665–6691, *Shar.alan@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Alan Shar.

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

Table of Contents

I. Background

On August 29, 2016, the EPA finalized new source performance standards (NSPS) for MSW landfills and Emission Guidelines and Compliance Times for existing MSW landfills in 40 CFR part 60, subparts XXX and Cf, respectively. See 81 FR 59332 and 81 FR 59313. These actions were taken under section 111 of the Act.

With respect to existing sources, including existing MSW landfills, section 111(d) of the Act requires the EPA to establish a procedure under which each state shall submit a plan to the EPA which establishes standards of performance for any air pollutant: (1) For which air quality criteria have not been issued or which is not included on a list published under CAA section 108 or emitted from a source category which is regulated under CAA section 112, but; (2) to which a NSPS would apply if such existing source were a new source. The EPA established requirements for

[20] *See* Registration Modernization, 83 FR 52336, 52339 (Oct. 17, 2018).

state plan submittals in 40 CFR part 60, subpart B. As discussed below, state plan submittals under CAA sections 111(d) must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Cf, and the requirements of 40 CFR part 60, subpart B and 40 CFR part 62, subpart A.

Once a NSPS for a source category is promulgated, the EPA publishes an emissions guideline (EG) applicable to the control of the same pollutants from existing (designated) facilities. In this action, a MSW landfill for which construction, reconstruction, or modification was commenced on or before July 17, 2014, is considered a designated facility. The MSW landfills EG, revised in 2016 and promulgated at 40 CFR part 60, subpart Cf, updates the control requirements and monitoring, reporting, and recordkeeping provisions for existing MSW landfill sources. The MSW landfills EG incorporates by cross-reference or direct adoption certain requirements for state and federal plans, as specified in 40 CFR part 60, subpart Cf.

States with designated facilities must then develop plans implementing the EG and submit them to the EPA for review and approval. State plans must include compliance times and other elements, such as inventories, legal authority, and public participation documentation, to demonstrate the ability to enforce the EG. See 40 CFR part 60, subpart B. The MSW landfills EG, found at 40 CFR part 60, subpart Cf, concerns the regulation of landfill gas and its components, including methane, from MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014. The deadline to submit a state plan to the EPA was May 30, 2017.

In this action, we are proposing to approve the incorporation by reference (IBR) of Title 20, Chapter 2, Part 64 Municipal Solid Waste Landfills (20.2.64 NMAC) for the State of New Mexico; and proposing to approve the IBR of Title 20, Chapter 11, Part 71 Municipal Solid Waste Landfills (20.11.71 NMAC) for the Albuquerque-Bernalillo County Air Quality Control Board.

II. Evaluation

EPA has evaluated the New Mexico Plan (submitted on May 25, 2017) and the Albuquerque-Bernalillo County Plan (submitted on May 24, 2017) to determine whether each meets the requirements of CAA section 111(d), 40 CFR part 60, subparts B and Cf, and 40 CFR part 62, subpart A. Both Plans were submitted to the EPA prior to the May 30, 2017 submittal deadline. See 40 CFR 60.30f(b). Section II.A below evaluates the New Mexico Plan while Section II.B evaluates the Albuquerque-Bernalillo County Plan.

A. State of New Mexico Plan

Title 20, Chapter 2, Part 64—Municipal Solid Waste Landfills of the New Mexico Administrative Code (20.2.64 NMAC) establishes requirements for municipal solid waste landfills in New Mexico (except Albuquerque and Bernalillo County) in order to control their methane and nonmethane organic compounds emissions. 20.2.64 NMAC was revised on April 28, 2017 and became effective on May 31, 2017. Title 20, Chapter 2, Part 77—New Source Performance Standards (20.2.77 NMAC) establishes state authority to implement federal NSPS for stationary sources in New Mexico. The CAA 111(d) Plan for MSW landfills in New Mexico was last approved by the EPA on November 24, 2006 (71 FR 67809). An approvable CAA section 111(d) Plan for MSW landfills has ten essential elements [1] incorporating the legal requirements for approvable state plans. See 40 CFR part 60, subparts B and Cf, and 40 CFR part 62, subpart A. These elements are as follows:

1. Identification of enforceable State mechanisms selected by the State for implementing the Emission Guidelines;
2. A demonstration of State's legal authority to carry out the Section 111(d) State plan as submitted;
3. An inventory of existing MSW landfills in the State affected by the Emission Guidelines;
4. Inventory of emissions from existing MSW landfills in the State;
5. Emission standards for existing MSW landfills that are ''no less stringent'' than those in the Emission Guidelines;
6. State process for review and approval of site-specific gas collection and control system design plans;
7. Compliance schedules extending no later than 30 months after the date the annual nonmethane organic compounds (NMOC) emission rate reaches or exceeds thresholds in Subpart Cf;
8. Testing, monitoring, recordkeeping, and reporting requirements;
9. A record of public hearing(s) on the State Plan; and
10. Provision for annual State progress reports to the EPA on implementation of the State Plan.

Each element of the New Mexico Plan has been evaluated in detail in the Technical Support Document (TSD) prepared in conjunction with this action.[2] Our evaluation demonstrates that the New Mexico Plan meets all these 10 elements and is consistent with the requirements for approvable section 111(d) state plans for MSW landfills.

B. Albuquerque-Bernalillo County Plan

Title 20, Chapter 11, Part 71—Municipal Solid Waste Landfills of the New Mexico Administrative Code (20.11.71 NMAC) establishes requirements for municipal solid waste landfills in Albuquerque-Bernalillo County in order to control their methane and nonmethane organic compounds emissions and serves as the enforceable mechanism to implement the EG. The Plan was adopted by the Albuquerque-Bernalillo County Air Quality Control Board on April 12, 2017 and became effective on May 13, 2017. Title 20, Chapter 11, Part 63—New Source Performance Standards for Stationary Sources (20.11.63 NMAC) provides for the authority to adopt specified federal NSPS requirements codified at 40 CFR part 60 (*e.g.,* 40 CFR part 60, subpart Cf for existing MSW landfills) within the Albuquerque-Bernalillo County jurisdictional area. The 111(d) Plan for MSW landfills for Albuquerque-Bernalillo County was last approved by the EPA on November 8, 1999 (64 FR 60689). For detailed evaluation of the 10 essential elements for approvable CAA section 111(d) state plans for MSW landfills (as referenced in Section II.A. above) for the Albuquerque-Bernalillo County Plan, please see the TSD prepared in conjunction with this action.[3] Our evaluation demonstrates that the Albuquerque-Bernalillo County Plan meets all these 10 elements and is consistent with the requirements for approvable section 111(d) state plans for MSW landfills.

III. Proposed Action

The EPA is proposing to approve revisions to the CAA section 111(d) Plan submitted by the NMED on May 25, 2017, to regulate landfill gas and its components, including methane, from existing MSW landfills in New Mexico, except for Albuquerque and Bernalillo County. We are also proposing to approve revisions to the CAA section

[1] See ''Municipal Solid Waste Landfills, Volume 2: Summary of the Requirements for Section 111(d) State Plans for Implementing the Muncipal Solid Waste Landfills Emission Guidelines,'' U.S. EPA, OAQPS; EPA–456R/98–009, November 1998 (hereinafter ''1998 State Plan Guidance'').

[2] Pages 4–15 of the TSD, Docket ID. NO. EPA–R06–OAR–2019–0306 at *www.regulations.gov*.

[3] Pages 16–26 of the TSD, Docket ID. NO. EPA–R06–OAR–2019–0306 at *www.regulations.gov*.

111(d) Plan submitted by the NMED on behalf of the Albuquerque-Bernalillo County Air Quality Control Board on May 24, 2017, for existing MSW landfills in Albuquerque and Bernalillo County. Both Plans are submitted to implement and enforce the EG for existing MSW landfills. See 40 CFR part 60, subpart Cf. The scope of the proposed approval of the section 111(d) Plans is limited to the provisions of 40 CFR parts 60 and 62 for existing MSW landfills, as referenced in the emission guidelines, 40 CFR part 60, subpart Cf.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference of the CAA section 111(d) Plan for New Mexico applicable to MSW landfills. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the New Mexico regulations regarding MSW landfills and to Albuquerque-Bernalillo County Air Quality Control Board regulations regarding MSW landfills in Albuquerque and Bernalillo County, as described in the Proposed Action section of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov,* docket ID NO. EPA–R06–OAR–2019–0306 and in hard copy at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve submission of CAA section 111(d) state plans that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, 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, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 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 this action is not significant 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 Act; and
- Does not provide the 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 proposed rule for existing MSW landfills within the State of New Mexico (including Albuquerque-Bernalillo County) does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the section 111(d) plan is not approved to apply in Indian country, as defined at 18 U.S.C. 1151, located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Municipal solid waste landfill, Intergovernmental relations, Methane, Reporting and recordkeeping requirements.

Dated: June 17, 2019.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2019–13127 Filed 6–20–19; 8:45 am]

BILLING CODE 6560–50–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Chapter 7

RIN 0412–AA86

Agency for International Development Acquisition Regulation (AIDAR): Leave and Holidays for U.S. Personal Services Contractors, Including Family and Medical Leave

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: The U.S. Agency for International Development (USAID) proposes to amend the Agency for International Development Acquisition Regulation (AIDAR) to revise the General Provision contract clause (hereafter ''clause'') 5 entitled ''Leave and Holidays (APR 1997).'' This proposed rule also makes other editorial and clarifying changes to this clause and the prescription.

DATES: Submit comments on or before August 20, 2019.

ADDRESSES: Submit comments by any of the following methods:

1. Through the Federal eRulemaking Portal at *http://www.regulations.gov* by following the instructions for submitting comments.

2. *By Mail addressed to:* U.S. Agency for International Development (USAID), Bureau for Management, Office of Acquisition & Assistance, Policy Division, Attn: Marcelle Wijesinghe, Room 867–J, SA–44, 1300 Pennsylvania Ave. NW, Washington, DC 20523–2052.

FOR FURTHER INFORMATION CONTACT: Richard Spencer, Telephone: 202–567–4781 or Email: *rspencer@usaid.gov.*

SUPPLEMENTARY INFORMATION:

A. Instructions

All comments must be in writing and submitted through one of the methods specified in the **ADDRESSES** section above. USAID encourages all commenters to include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of your comment.

Please note that USAID recommends sending all comments to the Federal eRulemaking Portal.

All comments will be made available at *http://www.regulations.gov* for public review without change, including any personal information provided. We recommend that you do not submit information that you consider confidential business information or any information that is otherwise protected from disclosure by statute.

USAID will only address comments that are relevant and within the scope of this proposed rule.

B. Background

USAID is seeking comments on this proposed rule to revise AIDAR appendix D as described below:

Section 4 is revised to make the prescription for annual and sick leave in paragraph (c)(2)(ix) consistent with section 12, General Provision clause 5 entitled ''Leave and Holidays.'' All the revisions to section 12, General Provision clause 5, including annual and sick leave, are as follows:

(1) Annual Leave.

The title of the clause is changed from ''Vacation Leave'' to ''Annual Leave,'' to be consistent with section 4, paragraph (c)(2)(ix) of this appendix, as well as USAID's time-keeping system, and the FMLA, which allows for use of ''annual'' leave.

- The minimum contract period required to accrue leave is clarified to indicate 90 days ''in total duration.''
- The terms ''tour,'' ''tour of duty,'' and ''employee'' are changed to ''period of performance'' and ''contractor'' to be consistent with contractual terminology.
- Annual leave accrual rates are broadened to include former service as a USAID PSC under any statutory authority, and U.S. Government civilian and/or honorable active duty uniformed service, using the definition from 5 U.S.C. 2101. The clause also specifies the documents the contracting officer may review as evidence of prior service. This change is intended to expand the market base and attract former U.S. government employees with relevant skills to participate in the competitive process.
- The maximum amount of annual leave that can be carried over from one calendar year to the next during the period of the contract is capped at 240 hours, consistent with the same restriction on U.S. direct hire employees. This change will also eliminate the need for manual entries to be made in the Agency's time-keeping system to reinstate forfeited leave that is automatically cancelled in the time-keeping system at the end of each calendar year.
- The conditions that allow the USPSC to avoid forfeiting annual leave are clarified; Mission Director endorsement is no longer required for the contracting officer to approve those conditions, and a Determinations and Findings (D&F) is now required before a lump-sum payment is authorized.
- Advanced annual leave is revised to require approval by the cognizant Assistant Administrator for USPSCs performing at USAID's headquarters. Also, the maximum amount of advanced leave that may be approved is limited to what the USPSC could earn in a twelve month period or over the life of the contract, whichever is less.

(2) Sick Leave.

- This paragraph is amended to clarify that the USPSC may take sick leave based on the same standards that apply to U.S. direct hire employees.
- A clarification is made to the carryover of sick leave to specify that it only applies to a subsequent ''follow-on'' contract for the same services.

(3) Home Leave.

Home leave is a benefit a USPSC can earn after performing services abroad, usually after two years. It provides time off that must be used in the U.S., subject to a commitment to continued service by the USPSC. Home leave is intended to ensure that persons living and working abroad undergo reorientation and re-exposure in the U.S., and is provided to USPSCs as a benefit comparable to U.S. direct hire employees. Detailed proposed changes to the text regarding home leave are as follows:

- Home Leave is currently only provided to USPSCs who agree to return to the same Mission abroad after completing home leave. In July 1998, USAID issued a policy deviation from the rule to authorize a maximum of 20 workdays home leave based on the USPSC's commitment to relocate to a different USAID Mission as a USPSC immediately following home leave for a specific period of time, subject to prior approval by the Mission Director (*i.e.,* the Mission from which the USPSC is departing.)
- The revised clause includes the required verification documents the USPSC must provide to support home leave based on their commitment to continue work under a new contract with a different USAID Mission.
- A clarification is made to the travel requirements to specify that travel time for home leave is not included in the days counted towards home leave, with a cross-reference to the related contract clause titled ''Travel and Transportation Expenses.''

(4) Home Leave for Qualifying Missions.

The addition of this category of leave is based on a 2006 amendment to the Foreign Service Act of 1980 (Pub. L. 96–465), as amended, which authorized this additional home leave for USPSCs following completion of a 12-month period of performance at qualifying Missions, currently Iraq, Afghanistan and Pakistan. Home leave for qualifying Missions is provided to USPSCs comparable to what is provided to direct-hire employees in order to attract USPSCs for these hard to fill positions.

(5) Holidays. The title and text of this paragraph is revised to add ''administrative leave'' to apply Agency emergency closures to USPSCs on the same basis as to U.S. direct hires.

(6) Military Leave.

- The ''U.S.'' is added to ''Armed Forces'' to clarify that the clause only applies to U.S. military service.
- The contract filing requirement has been clarified to inform the contractor that such approval will be maintained on file.

(7) Leave Without Pay.

- The ''LWOP'' abbreviation is included to conform to USAID's timekeeping system.
- Reference to use of LWOP for family and medical leave is included to conform to entitlements for this leave under the FMLA (Pub. L. 103–3).

(8) Compensatory Time. The term ''leave'' is removed to characterize this more accurately in line with USAID internal policies.

(9) Family and Medical Leave.

This clause adds a new section covering family and medical leave for all USAID USPSCs. USAID is extending the eligibility of family and medical leave to USPSCs performing in the U.S. as well as outside the U.S. as a matter of policy. The FMLA (Pub. L. 103–3) was enacted to allow employees to balance work and family life by protecting their employment and benefits status when taking reasonable leave for medical reasons, including child birth, adoption or care, or care for a spouse, parent or oneself in the event of a serious health condition.

Following inquiries from USPSCs, USAID examined the applicability of FMLA to USPSCs working in the U.S. and abroad. USAID found that eligibility under FMLA Title II is limited to U.S. Government direct-hire employees, and does not apply to contracts with individuals. However, USAID determined that USPSCs working in the U.S. are entitled to family and medical leave under Title I of the FMLA, as administered by the U.S. Department of Labor (DOL) through 29 CFR part 825. The DOL applies the broad definition of ''employee'' from the Fair Labor Standards Act of 1938, 29 U.S.C. 201.

USAID determined that FMLA does not apply to USPSCs working outside the U.S.; however, in November 2015 the Acting Administrator authorized family and medical leave for USPSCs working abroad as a matter of Agency policy. This decision was made to allow for a consistent leave policy for all USPSCs, irrespective of their place of performance. Based on this approval, in December 2015, USAID processed a two-year class deviation from (48 CFR) AIDAR appendix D, section 12, clause 5, ''Leave and Holidays'', to authorize family and medical leave for all USPSCs. USAID implemented the deviation on an interim basis pending the finalization of this rule.

USAID has determined that Cooperating Country National Personal Services Contractors (CCNPSCs) or Third-Country National PSCs (TCNPSCs) will not be entitled to the family and medical leave provided under this rule, even if other specific benefits are approved by the Mission Director based on an exception under (48 CFR) AIDAR appendix J. Key provisions of the rule regarding family and medical leave are as follows:

- The eligibility criteria are included in the clause in accordance with 29 CFR 825.110, with detailed requirements regarding establishing eligibility in USAID internal policy.
- The reasons when family and medical leave may be taken are specified in accordance with 29 CFR 825.112.
- The provisions for the substitution of LWOP with paid leave, as allowed under 29 CFR part 825.207, is consistent with what USAID provides to U.S. direct hires.
- Family and medical leave may not be authorized beyond the completion date of the contract.
- This section provides procedures the contractor must follow to establish eligibility for family and medical leave.
- The clause references the U.S. Department of Labor Wage and Hour division publication for more information about family and medical leave and procedures to report violations of the underlying law.

(10) *Leave Records.* Use of ''shall'' is changed to ''must.''

C. Impact Assessment

(1) Regulatory Planning and Review. Under E.O. 12866, OIRA has designated the proposed rule ''significant'' and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). OIRA has determined that this Rule is not an ''economically significant regulatory action'' under Section 3(f)(1) of E.O. 12866. This proposed rule is not a major rule under 5 U.S.C. 804.

The costs and benefit of the revisions described above are as follows, by each type of leave affected:

- Annual Leave—Under the existing rule, USPSCs can only accrue annual leave per pay period at increasingly higher hourly rates based on prior PSC service under the authority of ''Sec. 636(a)(3) of the FAA [Foreign Affairs Act of 1961, as amended]''. The default contractor accrual rate is four hours per pay period; however the contractor may accrue at a rate of six hours per pay period as a prior PSC under the FAA exceeding three years, or eight hours per period for prior PSC services under the FAA exceeding 15 years. The proposed rule broadens this to allow USPSCs to include prior service as a USAID PSC under other statutory authorities, as well as prior civilian or uniformed service. USAID estimated the cost of progressively adding four hours for three years and two hours for two years for 26 pay periods each year of a five year contract to reach the maximum eight hour accrual rate per pay period. USAID's historical data indicates only approximately 50% of a given USPSC population will have prior experience to make them eligible for the maximum accrual rate. Based on an average annual salary for a GS–13, 14, and 15 step 10 of $146,000 (base with DC locality) equal to $70/hour, USAID estimates 270 U.S.-based USPSCs (*i.e.* 50% of 540 total) would cost of approximately $1.575 million per year in higher accrual rates. The equivalent calculation for 275 USPSCs serving abroad (*i.e.,* 50% of 550 total) with an average salary of $117,000 (base with no locality) equal to $56/hour comes to $1.283 million per year. Therefore the total estimated cost of additional annual leave compensation based on the expanded prior service eligibility is estimated at $2.859 million per year.

The benefit of this provision is to provide this leave for USPSCs on a similar basis as is provided to U.S. direct hires in order to attract a wider pool of offerors with greater opportunities for higher accrual rates.

- Home Leave—The proposed rule will codify USAID's current policy in place by deviation from the existing AIDAR to add home leave eligibility for USPSCs who relocate to a different Mission under a new USPSC contract immediately following home leave every two years. Assuming about half of USAID's 550, or 275, USPSCs abroad fulfil their continued service commitments at a different Mission, the maximum additional cost at an average GS–13, 14, and 15 step 10 annual salary of $117,000 (base with no locality) equal to $450/day for 20 days is $2.476 million every two years, or $1.238 million for each year.
- Home Leave for Qualifying Missions—The proposed rule increases home leave by providing 10 days of leave for USPSCs after every 12 months abroad when performing at certain ''qualifying'' Missions, currently Iraq, Afghanistan, Pakistan and South Sudan. Together these Missions have approximately 70 USPSCs abroad, so again using the average GS–13, 14, 15 step 10 annual salary of $117,000 per year (base with no locality) equal to $450/day for 10 days, the total additional annual cost of this leave is approximately $315,000 each year. The cost of this additional leave is justified to increase the USAID's ability to field USPSCs for hard-to-fill positions at dangerous and high attrition Missions.
- Holidays and Administrative Leave—The proposed rule adds emergency dismissals and closures to acknowledge when USAID/Washington headquarters or Missions abroad are closed for inclement weather, civil unrest or other logistical complications. This will not have a cost impact since previously USPSCs were not able to work during USAID facilities closures, and so were given the same administrative leave as direct hires as a practical matter. Additionally, telework ready USPSCs will continue to perform as do direct-hires.
- Family and Medical Leave—The addition of family and medical leave will only have a marginal cost impact, if any, since this entitlement does not provide additional leave. USPSCs must use leave without pay, annual, or sick leave during family and medical leave status. The benefit that family and medical leave provides is that it entitles the individual to use their leave once they are determined eligible and are not subject to the ordinary leave approval process. Provision of this benefit to USPSCs performing in the U.S. is required by statute; therefore, the only expansion beyond what the law requires is the Agency's discretion to apply it equally to USPSCs based abroad. This decision was made to provide this entitlement equally to all USPSCs and not disadvantage those performing abroad.

As a regulatory matter, the cost of the rule making process to incorporate these revisions into the regulation is also justified. The AIDAR appendices include all the compensation and benefits available under personal services contracts. Therefore, the Agency needs these revisions in order to keep the regulation consistent, complete and transparent to industry, other government agencies and the general public.

(2) Regulatory Flexibility Act. The Director, Bureau for Management, Office of Acquisition and Assistance, acting as the Head of the Agency for purposes of the Federal Acquisition Regulation, certifies that this rule will not impact a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

(3) Paperwork Reduction Act. The proposed rule does not establish or modify a collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Chapter 7, Appendix D

Government procurement.

For the reasons discussed in the preamble, USAID proposes to amend 48 CFR chapter 7 as follows:

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT

■ 1. Amend Appendix D to Chapter 7 by:

■ a. In section 4, revising the second sentence of paragraph (c)(2)(ix);

■ b. In section 12:

■ i. Revising the section heading;

■ ii. Revising clause 5;

■ iii. In clauses 6 and 16, removing the word ''vacation'' each time it appears and adding in its place the word ''annual''.

■ c. By adding a parenthetical authority citation at the end of the appendix.

The revisions and addition read as follows:

Appendix D to Chapter 7—Direct USAID Contracts With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

* * * * *

4. Policy

* * * * *

(c) * * *

(2) * * *

(ix) * * * However, *PSCs with previous service are eligible to earn annual leave in accordance with the ''Leave and Holidays'' General Provision contract clause in section 12 of this appendix.*

* * * * *

12. General Provisions for a Contract With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

* * * * *

5. Leave and Holidays

[For use in all U.S. personal services contracts.]

Leave and Holidays (Date)

(a) *Annual Leave.* (1) The contractor is not entitled to annual leave if the period of this contract is ninety (90) days or less in continuous duration. If the contract period is more than ninety (90) days, the contractor will accrue annual leave as of the start date of the contract period of performance as specified in paragraph (a)(2) of this clause.

(2) The contractor will accrue annual leave based on the contractor's time in service according to the table of this paragraph (a)(2). The accrual rates are based on a full-time, 40-hour workweek, which may be prorated for a shorter work-week:

Time in service	Annual leave (AL) accrual rate
0 to 3 years	4 hours of leave for each 2-week period.
over 3, and up to 15 years	6 hours of AL for each 2-week period (including 10 hours AL for the final pay period of a calendar year).
over 15 years	8 hours of AL for each 2-week period.

(i) USAID will calculate the time in service based on all the previous service performed by the contractor as:

(A) An individual personal services contractor with USAID for any duration covered by Sec. 636(a)(3) of the FAA or other statutory authority applicable to USAID; and/or

(B) A former U.S. Government (USG) direct-hire civilian employee; and/or 3) an honorable active duty member of the uniformed services based on the definition in 5 U.S.C. 2101(3).

(ii) In addition to the information certified by the contractor in their Offeror Information form, the contracting officer may require the contractor to furnish copies of previously executed contracts, and/or other evidence of previous service (*e.g.* SF 50, DD Form 214 or 215) to conduct the due diligence necessary to verify creditable previous service.

(3) Annual Leave is provided under this contract primarily for the purposes of providing the contractor necessary rest and recreation during the period of performance. The contractor, in consultation with the Supervisor, must develop an annual leave schedule early in the period of performance, taking into consideration the requirements of the position, the contractor's preference, and other factors. The maximum amount of annual leave that the contractor can carry over from one leave year to the next is limited to 240 hours. The contractor's unused annual leave balance at the end of the last pay period of each calendar year will be forfeited, unless the requirements of the position precluded the employee from taking such leave. The contractor may be authorized to restore annual leave for exceptional circumstances beyond the control of the contractor. The restoration of annual leave may be approved only by the USAID Administrator, cognizant Assistant Administrator or Head of an Independent Office reporting directly to the USAID Administrator, and cannot be delegated further. Annual leave restored must be scheduled and used no later than either the end of the leave year two years after either

(i) The date fixed by the approving official as the termination date of the exigency of the public business or other reason beyond the contractor's control, which resulted in the forfeiture; or

(ii) The end of the contract, whichever is earlier.

(4) The contractor must use all accrued annual leave during the period of performance. At the end of the contract, the contractor will forfeit any unused annual leave except where the requirements of the position precluded the contractor from taking annual leave. In this case, the contracting officer may authorize the following:

(i) The contractor to take annual leave during the concluding weeks of the contract, not to exceed the period of performance; or

(ii) Payment of a lump-sum for annual leave not taken based on a signed, written determination and findings (D&F) from the contractor's supervisor. The D&F must set out the facts and circumstances that prevented the contractor from taking annual leave, and the contracting officer must find that the contractor did not cause, or have the ability to control, such facts and circumstances. This lump-sum payment must not exceed the number of days the contractor could have accrued during a twelve (12)-month period based on the contractor's accrual rate.

(5) The contractor may be granted advanced annual leave by the contracting officer when circumstances warrant. Advanced leave must be approved by the Mission Director, cognizant Assistant Administrator, or Head of an Independent Office reporting directly to the Administrator, as appropriate. In no case may the contracting officer grant advanced annual leave in excess of the amount the contractor can accrue in a twelve (12) month period or over the life of the contract, whichever is less. At the end of the period of performance or at termination, the contractor must reimburse USAID for any outstanding balance of advanced annual leave provided to the contractor under the contract.

(b) *Sick Leave.* The contractor may use sick leave on the same basis and for the same purposes as USAID employees. The contractor will accrue sick leave at a rate not to exceed four (4) hours every two (2) weeks for a maximum of thirteen (13) work-days per year. The contractor may carry over unused sick leave from year to year under the same contract, and to a new follow-on contract for the same work at the same place of performance. The contractor is not authorized to carry over sick leave to a new contract for a different position or at a different location. The contractor will not be compensated for unused sick leave at the completion of this contract.

(c) *Home Leave.* (1) The contractor may be granted home leave to be taken only in the U.S., its commonwealth, possessions or territories, in one continuous period, under the following conditions:

(i) The contractor must complete twenty-four (24) continuous months of service abroad under this contract, and must not have taken more than thirty (30) workdays leave (annual, sick or LWOP) in the U.S., its commonwealths, possessions or territories. The required service abroad will include the actual days in orientation in the U.S. (excluding any language training), travel time by the most direct route, and actual days abroad beginning on the date of arrival in the cooperating country. Any annual and sick leave taken abroad, excluding leave without pay (LWOP), will count toward the period of service abroad. Any days of annual and sick leave taken in the U.S., its commonwealths, possessions or territories will not be counted toward the required twenty-four (24) months of service abroad.

(ii) The contractor must agree to return immediately after completing home leave to continue performance for an additional—

(A) Two (2) years, or

(B) Not less than one (1) year, if approved in writing by the Mission Director before the contractor departs on home leave.

(iii) If the contractor agrees to meet the conditions in paragraph (c)(1)(ii) of this clause above by returning to the same USAID Mission under this contract or a new contract, the contractor may be granted thirty (30) workdays of home leave.

(iv) If the contractor agrees to meet the continued performance conditions of paragraph (c)(1)(ii) of this clause and will be relocating to a different USAID Mission under a new USAID personal services contract immediately following the completion of home leave, the contractor may be granted twenty (20) workdays of home leave. USAID will reimburse the contractor for these twenty days of home leave under this contract, not under the new contract.

(v) If home leave eligibility is based on paragraph (c)(1)(iv) of this clause, prior to departure on home leave, the contractor must submit to the contracting officer at the current Mission, a copy of the new contract with a special award condition in the contract Schedule indicating the contractor's obligation to fulfill the commitment for continued performance in accordance with paragraph (c)(1)(ii) of this clause.

(2) *Advanced Home Leave.* Notwithstanding the requirements in paragraph (c)(1)of this clause, the contractor may be granted advanced home leave subject to all of the following conditions:

(i) Granting of advanced home leave would serve in each case to advance the attainment of the objectives of this contract; and

(ii) The contractor has served at least eighteen (18) months abroad, as defined in paragraph (c)(4) of this clause, at the same USAID Mission under this contract, and has not taken more than 30 work days leave (annual, sick or LWOP) in the U.S.; and

(iii) The contractor agrees to return immediately after completing home leave to the same Mission to serve out the remaining time necessary to meet two (2) years of continued performance under this contract, plus an additional—

(A) Two (2) years, or

(B) Not less than one (1) year, if approved by the Mission Director, under the current contract, or under a new contract for the same or similar services at the same Mission, before the contractor departs on home leave.

(3)(i) Home leave must be taken only in the U.S., its commonwealths, possessions or territories. Any days spent in any other location will be charged to annual leave, or if the contractor does not have accrued annual leave to cover these days, the contractor will be placed on LWOP.

(ii) Travel time by the most direct route is authorized in addition to the home leave authorized under this ''Leave and Holidays'' clause. Salary during travel to and from the U.S. for home leave will be limited to the time required for travel by the most direct and expeditious route. Additional home leave travel requirements are included in the ''Travel and Transportation Expenses'' clause of this contract.

(iii) Except for reasons beyond the contractor's control as determined by the contracting officer, the contractor must return abroad immediately after home leave to fulfill the additional required continued performance of services for any home leave provided under this contract, or else the contractor must reimburse USAID for the salary and benefits costs of home leave, travel and transportation and any other payments related to home leave.

(iv) Unused home leave is not reimbursable under this contract.

(4) The contracting officer may authorize the contractor to spend no more than five (5) days in work status for consultation at USAID/Washington while on home leave in the U.S., before returning abroad. Consultation in excess of five (5) days or at locations other than USAID/Washington must be approved in advance by the Mission Director or the contracting officer.

(d) *Home Leave for Qualifying Missions.* (1) If the contractor ordinarily qualifies for home leave and has completed a 12-month period at one of the USAID qualifying Missions, as announced by the Department of State or USAID, the contractor is entitled to ten (10) workdays of home leave in addition to the home leave the contractor is normally entitled to in accordance with paragraph (c) of this ''Leave and Holidays'' clause.

(2) There is no requirement that an eligible contractor take this additional home leave for qualifying Missions; it is for use at the contractor's option. If the contractor is eligible and elects to take such home leave, the contractor must take all ten (10) workdays at one time in the U.S. under the conditions described in paragraphs (c)(5) and (c)(6) of this clause. If the contractor is returning to the U.S. and not returning abroad to the same or different USAID Mission, the contractor is not eligible for home leave for qualifying Missions, and this paragraph (d) will not apply.

(e) *Holidays and Administrative Leave.* The contractor is entitled to all holidays and administrative leave, including weather and safety leave, granted by USAID to U.S. employees as announced by the Agency or Mission.

(f) *Military Leave.* Military leave of not more than fifteen (15) calendar days in any calendar year may be granted to the contractor who is a reservist of the U.S. Armed Forces, provided that the military leave has been approved, in advance, by the contracting officer or the Mission Director. A copy of contractor's official orders and the contracting officer or Mission Director approval will be part of the contract file.

(g) *Leave Without Pay (LWOP).* The contractor may be granted LWOP only with the written approval of the contracting officer or Mission Director, unless a such leave is requested for family and medical leave purposes under paragraph (i) of this clause.

(h) *Compensatory Time.* USAID may grant compensatory time off only with the written approval of the contracting officer or Mission Director in rare instances when it has been determined absolutely essential and under the guidelines which apply to USAID direct-hire employees for its use.

(i) *Family and Medical Leave.* (1) USAID provides family and medical leave for eligible USPSCs working within the U.S., or any territories or possession of the U.S., in accordance with Title I of the Family and Medical Leave Act of 1993, as amended (FMLA), and as administered by the Department of Labor under 29 CFR 825. USAID also provides family and medical leave to eligible USPSCs working outside the U.S., or any territories or possession of the U.S., in accordance with this paragraph (i) outside the provisions of Title I of the FMLA as a matter of policy discretion.

(2) Family and medical leave only applies to USPSCs, not any other type of PSC.

(3) In accordance with 29 CFR 825.110, to be eligible for family and medical leave, the contractor must have performed services for—

(i) At least twelve (12) months with USAID; and

(ii) At least 1,250 hours with USAID during the previous 12-month period.

(4) In accordance with 29 CFR 825.200(a) and USAID policy in ADS 309, an eligible contractor may take up to twelve (12) workweeks of leave under FMLA, Title I, in any 12-month period for the reasons specified in 29 CFR 825.112.

(5) In accordance with 29 CFR part 825.207, the contractor may take LWOP for family and medical leave purposes. However, the contractor may choose to substitute LWOP with accrued annual or sick leave earned under the terms of this contract. If the contractor does not choose to substitute accrued paid leave, the contracting officer, in consultation with the contractor's supervisor, may require the contractor to substitute accrued paid leave for LWOP. The CO must obtain the required certifications for approval of family medical leave in accordance with USAID policy. The contractor must notify the contractor's Supervisor of the intent to

substitute paid leave for LWOP prior to the date such paid leave commences. After having invoked the entitlement to family and medical leave and taking LWOP for that purpose, the contractor cannot retroactively substitute paid leave for the LWOP already taken under family and medical leave.

(6) Family medical leave is not authorized for any period beyond the completion date of this contract.

(7) When requesting family medical leave, the contractor must submit the relevant leave request in writing, including certifications and other supporting documents required by 29 CFR 825 and USAID policy in ADS 309.

(8) The U.S. Department of Labor's (DOL's) Wage and Hour Division (WHD) Publication 1420 explains the FMLA's provisions and provides information concerning procedures for filing complaints for violations of the Act.

(j) *Leave Records.* The contractor must maintain their current leave records and make them available as requested by the Mission Director or the contracting officer.

* * * * *

(Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR, 1979 Comp., p. 435.)

Mark A. Walther,

Acting Chief Acquisition Officer.

[FR Doc. 2019–12810 Filed 6–20–19; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2019–0055]

RIN 2127–AL88

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel Container Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to petitions for rulemaking from the American Trucking Associations (ATA) and the Natural Gas Vehicles for America (NGVAmerica), NHTSA is proposing to amend the visual inspection labeling requirement in Federal Motor Vehicle Safety Standard (FMVSS) No. 304, ''Compressed natural gas fuel container integrity,'' to state that CNG fuel containers used on heavy vehicles should be inspected at least once every 12 months. NHTSA is proposing this change because CNG heavy vehicles are typically used in high-mileage commercial fleet operations and following the current mileage-based inspection interval on the label means conducting multiple visual inspections per year. NHTSA has tentatively concluded multiple visual inspections per year based solely on mileage would not improve vehicle safety for these high-mileage CNG heavy vehicles, and could potentially reduce safety. Because the current periodic visual inspection interval is intended for light vehicles and is consistent with the operation of these vehicles, no change is proposed to the periodic visual inspection interval for CNG fuel containers on light vehicles.

DATES: Comments must be received on or before August 20, 2019.

Proposed compliance date: We propose the compliance date for the amendments in this rulemaking action would be one year after the date of publication of the final rule in the **Federal Register**. We propose to permit optional early compliance with the amended requirements.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- Hand *Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit your comments, please mention the docket number of this document.

You may also call the Docket at 202–366–9324.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note: all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making 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.transportation.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ian MacIntire, Office of Crashworthiness Standards (telephone: 202–493–0248) (fax: 202–493–2990), or Daniel Koblenz, Office of Chief Counsel (telephone: 202–366–2992) (fax: 202–366–3820). Address for both officials: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenu, SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

This NPRM proposes to amend the label specified in S7.4(g) of FMVSS No. 304, ''Compressed natural gas fuel container integrity,'' by modifying the periodic visual inspection interval for CNG fuel containers installed on vehicles with a GVWR greater than 4,536 kg (''heavy vehicles'') to at least every 12 months (with no mileage interval).[1] FMVSS No. 304 (S7.4(g)) currently requires that CNG fuel containers on all vehicles (regardless of GVWR) be permanently affixed with a label that states: ''This container should be visually inspected after a motor vehicle accident or fire and at least every 36 months or 36,000 miles, whichever comes first, for damage and deterioration.'' NHTSA believes that

[1] The term ''heavy vehicles'' as used in this NPRM includes all vehicles with a GVWR greater than 4,536 kg. Heavy vehicles include both ''medium duty'' vehicles (with a GVWR greater than 4,536 kg and less than or equal to 11,793 kg) and ''heavy duty'' vehicles (with a GVWR greater than 11,793 kg), as those terms are used by the Federal Motor Carrier Safety Administration.

changing the periodic inspection interval for CNG fuel containers on heavy vehicles by removing the 36,000-mile mileage interval and reducing the 36-month time interval to a 12-month time interval would maintain safety while eliminating unnecessary visual inspections by high-mileage commercial motor carriers. These high-mileage carriers can reach the 36,000-mile mileage mark in as little as three months.

NHTSA initiated this rulemaking in response to petitions from the ATA (received April 13, 2016) and the NGVAmerica (received September 16, 2016) requesting that NHTSA amend S7.4(g) of FMVSS No. 304. According to the petitioners, although the label's current inspection interval (every 36,000 miles or 36 months, whichever comes first) is appropriate for light vehicles (vehicles with a GVWR less than or equal to 4,536 kg) which are typically driven between 10,000 miles and 12,000 miles annually, it is inappropriate for heavy vehicles, which are typically used in high-mileage commercial fleet operations. According to the petitioners, heavy duty vehicles (vehicles with a GVWR greater than 11,793 kg) are driven well over 100,000 miles annually and to follow the label's instructions, commercial operators of these vehicles need to conduct a detailed visual inspection of their vehicles' CNG fuel containers 3 to 4 times per year. The petitioners believe this creates an unreasonable burden on these commercial operators without a concomitant safety benefit.

To address this issue, the petitioners request that the agency amend the visual inspection label requirement to remove the mileage interval for visual inspection, while keeping a time interval. However, the two petitioners differ on how long this time interval should be, as well as to what weight classes of vehicle this change should apply. ATA suggests that the visual inspection label recommend an inspection interval of at least every 36 months, whereas NGVAmerica suggests that the label recommend an inspection interval of at least every 12 months. In addition, ATA requests that the revised visual inspection interval apply to CNG fuel containers on high-mileage commercial CNG vehicles, while NGVAmerica requests that the revised visual inspection interval apply to CNG fuel containers on all CNG vehicles.

After careful consideration, NHTSA has decided to partially grant the petitions for rulemaking. NHTSA proposes amending the FMVSS No. 304 visual inspection label to state that the CNG fuel container should be visually inspected for damage and deterioration after a motor vehicle accident or fire, and either (a) at least every 12 months when installed on a vehicle with a GVWR greater than 4,536 kg or (b) at least every 36 months or 36,000 miles, whichever comes first, when installed on a vehicle with a GVWR less than or equal to 4,536 kg. NHTSA proposes to amend the periodic visual inspection interval for CNG fuel containers on heavy vehicles to ''at least once every 12 months,'' without including a mileage interval, to account for the fact that these vehicles are commonly used for high-mileage commercial purposes. The current periodic inspection interval (at least every 36,000 miles or 36 months, whichever comes first) was originally intended for light vehicles. NHTSA has tentatively concluded that reducing the frequency of inspections to once every 12 months for heavy vehicles aligns the requirement with the agency's intent that the inspection interval be reasonable and not excessive, and is appropriately tailored to the vehicle type (high-mileage commercial vehicles). In addition, a 12-month interval for visual inspection aligns with a Federal Motor Carrier Safety Administration (FMCSA) requirement that inspections must be performed annually. (This NPRM does not propose changes to the periodic visual inspection interval for CNG fuel containers on light vehicles because the current periodic inspection interval (at least every 36,000 miles or 36 months, whichever comes first) is consistent with ensuring adequate safeguards for the operation of these vehicles. Petitioner NGVAmerica did not provide information supporting changing the interval to 12 months for the light vehicle population, so that aspect of its petition is denied.)

NHTSA expects that revising the periodic inspection interval for heavy vehicles on the FMVSS No. 304 visual inspection label will result in fewer visual inspections being conducted. Many States require that commercial operators of CNG vehicles comply with the National Fire Protection Association (NFPA) voluntary standard NFPA–52, ''Vehicular Natural Gas Fuel Systems,'' which states that CNG fuel containers should be inspected in accordance with the container manufacturer's instructions (*i.e.,* the required FMVSS No. 304 visual inspection label).[2] Currently, 20 States (Alabama, California, Colorado, Connecticut, Delaware, Hawaii, Florida, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Nebraska, New Hampshire, Rhode Island, Texas, Vermont, Virginia, and Wisconsin) have adopted NFPA–52 in their regulations. If the inspection interval specified by the FMVSS No. 304 label were amended as proposed in this NPRM, the commercial operators of CNG vehicles operating pursuant to NFPA–52, or those following a comparable practice of inspecting the containers as per the interval set forth in the label, would not have to inspect the CNG fuel containers as frequently. Taking into account the cost savings that would result from fewer visual inspections, NHTSA estimates the annual maintenance cost savings from this proposal range from $52.4 million to $83.84 million when fully implemented into the fleet, assuming the current CNG heavy vehicle fleet size remains unchanged. The agency believes this is a low estimate of the maintenance cost savings since CNG heavy vehicle sales are projected to steadily increase through 2040.[3]

II. Summary of Petitions

This rulemaking responds to two petitions requesting that NHTSA amend the FMVSS No. 304 visual inspection labeling requirement (S7.4(g)) for CNG fuel containers.

NHTSA received the first of these petitions from American Trucking Associations (ATA) on April 13, 2016.[4] ATA requests that we amend the visual inspection label for CNG fuel containers on high-mileage commercial vehicles to: ''This container should be visually inspected for damage and/or deterioration after a motor vehicle accident or fire, and at least every 36 months.'' ATA states that a visual inspection of the CNG fuel container is ''thorough, time consuming and expensive,'' and that ''requiring that it be done every 36,000 miles for vehicles that often travel over 100,000 miles per year is an unnecessary burden on the industry'' because high-mileage commercial fleets undergo an annual safety inspection which includes the fuel system, regardless of the label statement.

ATA states that field data collected by NGVAmerica and the Clean Vehicle Education Foundation (CVEF) on CNG vehicle incidents shows there were 20

[2] See *https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=52.*

[3] See Baker, et al., ''Alternative Fuel Vehicle Forecasts (April 2016),'' Texas A&M Transportation Institute, *https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC–14–28F.pdf.*

[4] According to its website, ATA is the largest national trade association for the trucking industry and represents more than 37,000 members covering every type of motor carrier in the U.S.

CNG fuel container failures in the United States (U.S.) since 1984, and that most of these failures were because of external influences such as impact, heat, or chemical damage. ATA states some of the CNG fuel container failure incidents resulted in changes in voluntary industry codes and standards to ensure safe deployment of CNG vehicle technology, and that as a result of improvements in voluntary container standards, the CNG fuel container is the currently most reliable component within the high-pressure fuel system. According to ATA, the high reliability of CNG fuel containers means that decreasing the frequency of visual inspections would not reduce vehicle safety.

NHTSA received the second petition from NGVAmerica on September 16, 2016.[5] NGVAmerica requests that we amend the statement for CNG fuel containers to: ''This container should be visually inspected for damage and/or deterioration after a motor vehicle accident or fire, and at least every 12 months.'' Like ATA, NGVAmerica believes that following the inspection interval specified in S7.4(g) for heavy vehicles would lead to detailed visual inspections of CNG fuel containers 3 to 4 times per year without a safety benefit, which unreasonably burdens commercial operators. NGVAmerica also believes that, because the inspection involves physically removing and later replacing parts of the vehicle's protective structure around the CNG tank (shielding), unnecessary inspections needlessly increase the risk of damage to the fuel system.

NGVAmerica requests that the new visual inspection label language be required for all vehicles, including light vehicles. However, NGVAmerica does express concern that changing the inspection interval on the label from once every 36 months or 36,000 miles to once every 12 months would be burdensome for most light vehicle owners and operators, as it could potentially triple the frequency with which they currently conduct inspections. NGVAmerica suggests that this problem could be addressed by limiting the applicability of the new label to lower-mileage vehicles, but does not propose specifically how to do so in its petition.

[5] According to its website, NGVAmerica is a trade association that represents more than 230 companies, environmental groups, and organizations interested in the promotion and use of natural gas as motor fuel.

III. Background

a. FMVSS No. 304 and FMCSR 393.68

FMVSS No. 304 specifies performance and labeling requirements for CNG fuel containers on passenger cars, multipurpose passenger vehicles, trucks, and buses that use CNG as a motor fuel, and to each container designed to store CNG as a motor fuel on-board any motor vehicle. (FMVSS No. 304, S3.) FMVSS No. 304 contains a number of performance requirements for CNG fuel containers to ensure adequate strength, durability, and pressure relief characteristics of CNG fuel containers installed on motor vehicles.

Because proper maintenance of CNG fuel containers is critical to their long-term safety, NHTSA requires that CNG fuel containers be affixed with a label providing for visual inspection periodically and after a motor vehicle accident or fire. This promotes safe use of the containers and reduces the possibility that damage caused by external factors (including motor vehicle accidents and fires) would go undetected, a situation that could lead to CNG fuel container failure.[6] The requirement for a visual inspection label is found in S7.4(g) of FMVSS No. 304. Currently, CNG fuel containers on all vehicles must be permanently labeled with the statement, ''This container should be visually inspected after a motor vehicle accident or fire and at least every 36 months or 36,000 miles, whichever comes first, for damage and deterioration.'' [7]

Although NHTSA has the authority to require that all new CNG fuel containers be labeled in accordance with S7.4(g), NHTSA does not have the authority to require that commercial operators of CNG vehicles follow the inspection interval found on the visual inspection label. Rather, the in-use operation, inspection, repair, and maintenance of commercial motor vehicles is regulated federally by the FMCSA.[8] FMCSA regulates commercial motor vehicles primarily thorough the promulgation and enforcement of Federal Motor Carrier Safety Regulations (FMCSRs).

FMCSR 393.68, ''Compressed natural gas fuel containers,'' which is administered by FMCSA, directly addresses CNG fuel containers. It requires that all CNG fuel containers conform to FMVSS No. 304, and specifically requires that they meet the labeling requirements. It is the agency's understanding that commercial carriers that operate CNG vehicles typically treat the inspection interval on the FMVSS No. 304 visual inspection label as the de-facto minimum inspection interval for the industry. (Further, as noted above, 20 States have adopted NFPA Code 52, ''Vehicular Natural Gas Fuel Systems,'' which specifies that commercial vehicle operators visually inspect CNG fuel containers in accordance with the visual inspection label permanently affixed to the container per FMVSS No. 304.)

[6] 60 FR 57943, November 24, 1995.

[7] A detailed account of the history of the FMVSS No. 304 visual inspection requirement can be found in the appendix to this document.

[8] See Motor Carrier Safety Act of 1999 (49 U.S.C. 113).

b. FMCSA Research and Recommendation

In March 2013, FMCSA issued a research report titled, ''Natural Gas Systems: Suggested Changes to Truck and Motorcoach Regulations and Inspection Procedures'' [9] (herein referred to as the ''March 2013 Report''), which provided recommendations for changes to the FMCSRs and other standards [10] to accommodate and facilitate the use of natural gas as a motor fuel in commercial motor vehicles. FMCSA initiated this research project in 2012 to identify whether there are needed changes to the current FMCSRs and inspection procedures to specifically and fully address unique characteristics of natural gas used as a fuel. FMCSA's goal was to improve the safety of commercial motor vehicle operations by ensuring commercial motor vehicles powered by natural gas meet appropriate safety criteria at all times while operating on public roads. As part of its research, FMCSA conducted an extensive literature review of codes, standards, best practices, and lessons learned related to natural gas fueled heavy vehicles as well as a series of industry site visits to gather feedback.

One recommendation in the March 2013 Report was for NHTSA to modify the required visual inspection label on CNG fuel containers by deleting the reference to mileage for commercial motor vehicles. The report notes the labeling requirement was originally intended for passenger cars, and that commercial motor vehicles, which typically travel more than 160,930 km (100,000 miles) per year, were not taken into account. The report also states that, for commercial motor vehicles, the reference to mileage in the current

[9] FMCSA–RRT–13–044, ''Natural Gas Systems: Suggested Changes to Truck and Motorcoach Regulations and Inspection Procedures,'' March 2013. *https://rosap.ntl.bts.gov/view/dot/83.*

[10] North American Standard (inspection procedures and out-of-service criteria) and FMVSS No. 304.

visual inspection label results in at least three detailed inspections of the CNG fuel containers per year performed by CNG-trained mechanics, which is too burdensome and unnecessary. Accordingly, the report recommends that NHTSA amend the visual inspection label requirement of FMVSS No. 304 to delete the reference to mileage for commercial motor vehicles.

IV. NHTSA's Analysis

a. Introduction

In general, CNG heavy vehicles are currently used in commercial fleet operations.[11] Although the U.S. has an extensive natural gas distribution system in place, vehicle fueling infrastructure (*i.e.,* availability of fueling stations) is limited. Therefore, natural gas as a vehicle fuel is most amenable to commercial fleet operations that install their own natural gas fueling stations and/or partner with other fleet operations. Because the initial cost of CNG vehicles is significantly higher than conventional diesel vehicles, commercial carriers who operate CNG vehicles tend to do so in high-mileage operations, so that they can more quickly recover the initial cost.[12] As a result, natural gas as a motor fuel is gaining popularity among medium and heavy duty vehicle fleets such as shuttle, transit, and school buses, refuse trucks, street sweepers, and large haul truck tractor/trailers with centralized fueling operations.[13] Natural gas is most commonly used as fuel by medium and heavy duty vehicle commercial fleet operations, because the price for natural gas has been low relative to diesel and gasoline,[14] and refueling infrastructure can be centrally located for fleet operations.[15]

b. FMVSS No. 304's Inspection Label Was Based on Lower-Mileage Light Vehicles

The petitioners justify their request to amend the FMVSS No. 304 visual inspection label in part by arguing that the visual inspection label's current 36,000-mile mileage interval was intended for lower-mileage light vehicles, and is not necessarily appropriate for higher mileage heavy vehicles. NHTSA has concluded that the petitioners are correct that the current mileage interval was intended for light vehicles, based on both the regulatory history of the visual inspection label requirement, and a comparison of the average annual vehicle miles traveled (VMT) by light versus heavy vehicles.

NHTSA established the visual inspection label requirement in a final rule issued on November 24, 1995. In that rule, the Agency explained that it chose to recommend a visual inspection interval of 12-months/12,000 miles because it was ''consistent with the recommended interval for many motor vehicle warranties and routine maintenance items.'' [16] This meant that the agency tailored the visual inspection requirement to light vehicles, since the CNG vehicle fleet at the time was primarily comprised of light vehicles. The visual inspection label then changed to the current 36-month/36,000-mile interval in response to petitions for reconsideration of the November 24, 1995 final rule. Like the final rule itself, NHTSA's response to the petitioners for reconsideration of the visual inspection label was based on field data available at the time, which was primarily obtained from light vehicles.[17] The visual inspection label has not been changed since.

A statistical analysis of mileage data collected by the U.S. Federal Highway Administration (FHWA) shows that the 3-year/36,000-mile interval on the inspection label is more consistent with the average annual VMT of light vehicles than of heavy vehicles.[18] The average annual VMT in 2014 and 2015 for all vehicles (not just CNG vehicles) broken down by vehicle type, is shown in Table 1:

TABLE 1—AVERAGE ANNUAL VMT IN 2014 AND 2015 BY VEHICLE TYPE *

[All fuel types]

Year	All light vehicles	All buses	All single unit trucks (SUTs)	All combination trucks (CTs)
2014	11,287	18,347	13,123	65,897
2015	11,443	18,258	12,960	61,978
Average	11,365	18,303	13,042	63,938

* Buses, SUTs, and CTs are overwhelmingly heavy vehicles.

Table 1 indicates that an average light vehicle travels just shy of 12,000 miles over 12 months and equates to approximately 36,000 miles over 36 months. By contrast, the average annual VMT of combination trucks (truck/tractor with trailer) is nearly 6 times that of light vehicles (passenger cars, vans, light trucks, and sport utility vehicles), and the average annual VMT of buses is 1.6 times greater than that of light vehicles.

Although the single unit trucks (SUTs) [19] figure is comparable to that of light vehicles, we think it is likely that CNG SUTs are typically used in high-mileage and centrally fueled fleet operations. This is because CNG vehicles have a relatively high upfront cost to operators, which means that they are generally used in high-mileage operations to recoup that cost and thus tend to have higher annual VMTs than average vehicles in their weight class.[20] Accordingly, although NHTSA does not have precise VMT data on CNG SUTs, the agency believes that the average

[11] Baker, et al., ''Alternative Fuel Vehicle Forecasts (April 2016),'' Texas A&M Transportation Institute, *https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC-14-28F.pdf.*

[12] U.S. Department of Energy, ''Natural Gas Vehicles,'' Alternative Fuels Data Center, *https://www.afdc.energy.gov/vehicles/natural_gas.html.*

[13] *https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC-14-28F.pdf.*

[14] For example, the national average price of CNG in April 2018 was about 30 percent less than that of diesel.

[15] Baker, et al., ''Alternative Fuel Vehicle Forecasts (April 2016),'' Texas A&M Transportation Institute, *https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC-14-28F.pdf.*

[16] 60 FR 57945, November 24, 1995.

[17] 61 FR 47086, September 6, 1996

[18] Data obtained from the FHWA Office of Highway Policy Information—Annual Vehicle Distance Traveled in Miles and Related Data—2015 by Highway Category and Vehicle Type. *https://www.fhwa.dot.gov/policyinformation/statistics/2015/vm1.cfm.*

[19] SUTs are defined as single frame trucks with 2-axles and at least 6 tires or a GVWR greater than 4,536 kg. See *https://www.fhwa.dot.gov/policyinformation/statistics/2015/vm1.cfm.*

[20] U.S. Department of Energy, ''Natural Gas Vehicles,'' Alternative Fuels Data Center, *https://www.afdc.energy.gov/vehicles/natural_gas.html.*

annual VMT by CNG SUTs is likely significantly higher than the average reported in Table 1 for all SUTs.

For these reasons, NHTSA agrees with the petitioner's assessment that the current mileage interval on the visual inspection label was intended for light vehicles and is not consistent with medium and heavy duty vehicle CNG fleet operations due to the greater miles traveled annually by the latter vehicles. NHTSA seeks comment on the appropriateness of the current labeling requirement for high-mileage heavy vehicles. In addition, to focus on the average annual VMT for CNG heavy vehicles, the agency seeks comment and input on the average annual VMT of CNG vehicles by vehicle GVWR.

c. Cost Burden of Frequent Vehicle Inspections

According to ATA's petition, following the current periodic visual inspection interval specified on the FMVSS No. 304 visual inspection label (*i.e.,* 36,000 miles or 36 months, whichever comes first), means that CNG fuel containers on heavy duty vehicles need to be inspected three to four times per year, at an annual cost between $1,500 and $2,500 per vehicle.[21] NHTSA tentatively agrees that this is a reasonable estimation of the annual cost burden imposed on high-mileage carriers.

According to ATA, the cost of a single inspection ranges between $200 and $500 per vehicle with an average cost of $350. This cost includes inspection by a trained and certified inspector and removal and replacement of shields or covers of the CNG fuel containers before and after the inspection, respectively. In addition, ATA expects a vehicle to have a two-day downtime for the inspection costing about $150 per day. Using the information provided by ATA, NHTSA estimates that the average cost of a single inspection is about $650 ($350 + 2 × $150).

This information is supportive of the petitioners' views that multiple visual inspection of the CNG fuel container per year imposes an unreasonable economic burden on operators of high-mileage commercial CNG-fueled heavy vehicles given the apparent absence of a safety need for multiple inspections. NHTSA notes, however, that the agency has not conducted its own research on this subject and thus has no basis on which to independently corroborate those calculations. (Although the March 2013 FMCSA report concluded that frequent visual inspections did impose a cost on operators of commercial vehicles, it did not include hard calculations of what that cost would be.) We therefore seek comment and input on the frequency of visual inspections, cost of an inspection, number of days of downtime per inspection, and the cost of downtime.

[21] This estimate is of the cumulative cost of all fuel tank inspections that can be attributed to following the inspection label.

d. Potential Safety Risks of Frequent CNG Fuel Container Inspections

NGVAmerica argues in its petition that multiple detailed visual inspections of CNG fuel containers per year can increase the risk of damage to the fuel system.

According to NGVAmerica, frequent visual inspections can increase risk of damage because visual inspections require that the fuel system's covers and shields be removed and reinstalled. Frequent removal and reinstallation of shielding and covers increases the risk of human error, such as leaving a bolt or fastener loose, over tightening a bolt or fastener, moving a fuel line out of place which could cause it to rub other components, replacing a bolt or fastener with one that is too long that rubs against other components, or replacing a bolt with one that is too short and does not provide proper clamping force. The petitioner believes that this risk cannot be eliminated even with improved training and feedback to the technicians. In addition, bolts and fasteners have a usable life cycle and frequent removal and replacement may increase wear and tear resulting in premature hardware failure.

The agency seeks comment on the extent of potential damage to the fuel system and the associated safety risks posed by frequent visual inspections.

e. Field Data on CNG Vehicle/Container Failures

ATA states in its petition that field data indicate that there are very few instances of container failures across all CNG-fueled vehicles, and that these failures were due to external influence, such as impact and excessive heat rather than insufficient inspection. NHTSA tentatively agrees with this assessment.

CNG fuel containers are high pressure vessels and need more scrutiny to detect damage and deterioration than fuel tanks of diesel fueled vehicles because failure of a high-pressure vessel can be catastrophic. Nonetheless, according to ATA, between 1984 and 2015 there were only about 20 known CNG fuel container failures in the U.S. and Canada. ATA attributes this low number to the high quality of CNG fuel containers due to voluntary industry standards.

ATA states that the statistic it cites of approximately 20 canister failures from 1984 to 2015 is based on field data collected by the CVEF.[22] NHTSA linked the source of ATA's information to a presentation, ''CVEF ACT Training,'' [23] which reported there were 68 CNG vehicle ''incidents'' in North America from 1984 to 2015.

NHTSA obtained the CVEF Master Incident List [24] underlying the ''68 incidents'' statistic, and found that 19 of these incidents were CNG fuel container rupture failures. (The other ''incidents'' on the list were not container failures; they involved either a CNG leak or a release of CNG by Pressure Release Device (PRD) activation, which are typically caught during the routine pre-trip inspection that drivers must do every time they operate the vehicle.) Of the 19 CNG canister ruptures, 16 occurred in the U.S. and 3 occurred in Canada. Details of the 16 CNG fuel container failures in the U.S., broken down by container type,[25] are shown in Table 2.

[22] CVEF was funded by the U.S. Department of Energy's National Renewable Energy Laboratory, but all the data collected has been transferred to and it maintained by NGVAmerica. It is available at *http://www.ngvamerica.org/media-center/technical-and-safety-documents/.*

[23] Horne, Douglas, Dimmick, John, ''CVEF ACT Training,'' originally published on May 14, 2012. The document was updated on September 26, 2016. The document is available from NGVAmerica and in the docket of this NPRM.

[24] CVEF Master Incident List is a list of CNG incidents world-wide originally collected and documented by CVEF up to 2015. The document is maintained by NGVAmerica. A copy of the document is available in the docket of this NPRM.

[25] Because different types of CNG fuel containers experience different types of failure modes and are susceptible to different types of failure mechanisms, failures are grouped by container type. There are generally four types of CNG fuel containers. The type designation is based on the way the container is made and the material it is made out of (aluminum, steel, carbon fiber, etc.). Type 1 containers are all metal cylinders (steel or aluminum). Type 2 containers have a thinner metal liner and a composite and wire or metal hoop ''wrap'' that provides reinforcement for the cylinders. Type 3 containers have a metal liner that is completely wrapped in composite/fiber resin. Type 4 containers are cylinders with a polymer liner wrapped in fiber.

TABLE 2—CAUSE OF CNG FUEL CONTAINER FAILURE INCIDENTS IN THE U.S. FROM 1984 TO 2015

Cause of CNG fuel container failure	Number of CNG fuel container failures by container type				
	Type 1	Type 2	Type 3	Type 4	Total
Fire or failure of pressure relief device	0	1	0	1	2
External corrosion	0	0	0	0	0
Overpressurization	1	0	0	0	1
Physical damage	0	0	0	2	2
Combination of overpressurization, physical damage, and stress corrosion cracking	0	3	0	0	3
Stress corrosion cracking from acid/chemical exposure, degradation of glass fiber	0	0	8	0	8
Total	1	4	8	3	16

Among the 16 CNG fuel container failures in the U.S. from 1984 to 2015, one was a Type 1 container, four were Type 2 containers, eight were Type 3 containers, and three were Type 4 containers. Two CNG fuel container failures (one Type 2 and one Type 4) were caused by fire during which the pressure relief device (PRD) failed to operate. One Type 1 container failure was caused by overpressurization by faulty fueling systems. Three Type 2 container failures were caused by a combination of stress corrosion cracking, physical damage, and overpressurization resulting from improper installation of the container on the vehicle. Eight Type 3 container failures were caused by stress corrosion cracking from exposure to chemicals and acid that resulted in degradation of the glass wrap.[26] Two Type 4 container failures were caused by physical damage. One Type 4 container failure was caused by an impact with an overpass during vehicle motion (the container was located on the roof), and another Type 4 container failure was caused by an impact with road debris while the vehicle was in motion (the container was mounted under the floor and not protected from damage). NHTSA notes that it is not known how long prior to some of these failures a visual inspection was performed.

Periodic visual inspections are intended to detect external damage to the CNG fuel containers; it is possible inspections have found anomalies that undetected could have resulted in incidents such as those described above. However, data do not indicate the necessity of multiple visual inspections per year over a single annual inspection. In the 1980s and 1990s, the CNG fleet was composed of taxi cabs, delivery vans, and light trucks, *i.e.,* vehicles whose CNG containers were labeled under FMVSS No. 304 as subject to an inspection interval of every 36 months or 36,000 miles. Given that the extremely low failure rate of CNG fuel containers (19 failures over 33 years)[27] occurred during a time the containers were presumably only inspected every 36 months or 36,000 miles, it does not appear to NHTSA that there is a need for the heavy vehicle containers to be visually inspected every 3 to 4 months (which results from following the wording of the current FMVSS No. 304 label). Thus, NHTSA has tentatively concluded that multiple inspections per year are excessive to ensuring CNG fuel container safety.[28] Accordingly, NHTSA has tentatively concluded that visually inspecting CNG fuel containers multiple times per year does not produce a safety benefit commensurate with the burden of inspection.

The agency seeks comment and input on CNG vehicle incidents in the field, the effectiveness of visual inspections for identifying potential CNG container failures, and the frequency with which inspections conducted every 3- to 4-months reveal safety problems on heavy vehicles.

V. Proposed Changes to the Visual Inspection Label

In consideration of the above, NHTSA is proposing to modify the FMVSS No. 304 label for visual inspection of CNG fuel containers to state: ''This container should be visually inspected for damage and deterioration after a motor vehicle accident or fire, and either (a) at least every 12 months when installed on a vehicle with a GVWR greater than 4,536 kg or (b) at least every 36 months or 36,000 miles, whichever comes first, when installed on a vehicle with a GVWR less than or equal to 4,536 kg.''

NHTSA has tentatively decided to revise the periodic inspection interval for heavy vehicles to at least once every 12 months primarily for two reasons. First, a 12-month inspection period would be consistent and aligned with the annual inspection commercial motor vehicles undergo in accordance with FMCSR 396.17, ''Periodic inspection,'' which includes inspection of the fuel system and fuel container for leaks, damage, and deterioration.[29] An annual visual inspection interval of CNG fuel containers on heavy vehicles would permit the inspection of the CNG fuel containers along with the rest of the fuel system, which is reasonable and practical.

Second, the agency believes that a 12-month inspection interval for heavy vehicles is appropriate because the agency lacks field data to support moving to a longer interval, such as every 36 months (as was suggested in the March 2013 Report). NHTSA is concerned that because heavy vehicles in commercial fleets travel significantly more miles than light vehicles, the CNG fuel containers on heavy vehicles may be exposed to more wear and tear than CNG fuel containers on light vehicles. In light of this concern, NHTSA has tentatively concluded that that an

[26] In 2001, the American National Standards Institute (ANSI) revised NGV 2, ''Basic Requirements for Compressed Natural Gas Vehicle (NGV) Fuel Containers,'' a voluntary industry standard for the manufacturers of CNG fuel containers to address the fact that a disproportionate number of container failures involved Type 3 containers that ruptured due to stress corrosion cracking resulting from acid and chemical exposure that degraded the containers' glass fibers. Since the revision of NGV 2, there have been no known failures of this type.

[27] To put this figure in perspective, the U.S. Department of Energy estimates that there are over 160,000 natural gas vehicles on U.S. roads today. *See https://www.afdc.energy.gov/vehicles/natural_gas.html.* NGVAmerica estimates that this figure is even higher at 175,000 vehicles. *See https://www.ngvamerica.org/why-ngv/.*

[28] NHTSA is aware of only the CVEF data on this subject. Commenters knowing of other data are encouraged to submit such information.

[29] A 12-month inspection interval for CNG fuel containers is also consistent with the CNG fuel system inspection system developed by the NGVAmerica Technology &Development Committee and ATA's Technology Maintenance Council. See Compressed Natural Gas Fuel System Inspection Guidance,'' NGVAmerica Technology & Development Committee, *https://www.ngvamerica.org/2017/12/04/new-cng-fuel-system-inspection-guidance-released/.*

annual visual inspection interval is appropriate because it is more likely to provide inspectors an opportunity to identify and remedy damage to the CNG fuel container and fuel system prior to a fuel container failure, as compared to a 36-month inspection interval. NHTSA seeks comment on its tentative decision to include a 12-month inspection interval on the visual inspection label for heavy vehicles rather than a 36-month period.

Because NHTSA believes that the current periodic visual inspection interval on the visual inspection label is appropriate for light vehicles, the proposed language for the label includes different periodic inspection intervals for light and heavy vehicles. NHTSA believes that keeping a single, universally applicable label articulating the two different inspection intervals is preferable to requiring different labels for CNG fuel containers depending on the weight class of the vehicles because manufacturers of CNG fuel containers may not know the GVWR of the vehicle on which the fuel container will be installed at the time the manufacturer affixes the label.

In addition, NHTSA believes that whether a vehicle has a GVWR greater than 4,536 kg (*i.e.,* whether a vehicle is a heavy vehicle) is the proper way to determine whether the revised inspection interval is appropriate for that vehicle. Currently available data show nearly all new CNG heavy vehicles are used in commercial high-mileage fleet operations.[30] Because of limited public fueling infrastructure and the high initial cost of CNG vehicles compared to conventional diesel vehicles, CNG as a motor fuel is mainly used in high-mileage commercial fleets that allow for quick recovery of initial cost. Thus, as a practical matter, the revised periodic inspection interval would affect virtually only vehicles with a GVWR greater than 4,536 kg used in commercial fleet operations.

NHTSA seeks comment on CNG vehicles, with a GVWR greater than 4,536 kg, that are used in low-mileage operations and are currently inspected at intervals greater than 12 months. We seek information on the number of such vehicles, whether the proposed 12-month inspection interval would increase the burden without commensurate safety improvements, and appropriate treatment of these vehicles for visual inspection of their CNG fuel containers.

VI. Overview of Costs and Benefits

ATA stated the cost of a single visual inspection ranges between $200 and $500 per vehicle. This cost includes inspection by a trained and qualified inspector and removal and replacement of shields or covers of the CNG fuel containers before and after the inspection. ATA expects a vehicle to have a 2-day downtime for the inspection with a cost of about $150 per day. Using this information, NHTSA estimates the cost of a single inspection is $500 ($200 + $150 × 2) to $800 ($500 + $150 × 2) with an average of $650 ($350 + $150 × 2). For purposes of estimating costs and benefits, heavy vehicles were broken down into two categories: ''medium duty'' vehicles (with a GVWR greater than 4,536 kg and less than or equal to 11,793 kg) and ''heavy duty'' vehicles (with a GVWR greater than 11,793 kg).

For determining the number of CNG heavy vehicles in the fleet, NHTSA reviewed available information on CNG vehicle stock from the U.S. Energy Information Agency (EIA) and from NGVAmerica. According to EIA's Annual Energy Outlook 2017, there were 2,150 CNG medium duty vehicles and 22,350 CNG heavy duty vehicles on the roads in 2015.[31] By contrast, data from NGVAmerica indicates that there are 25,800 CNG medium duty vehicles and 39,500 CNG heavy duty vehicles.[32] NHTSA believes that NGVAmerica's data is more accurate than EIA's data because NGVAmerica obtains stock data from its members, whereas EIA uses vehicle registration data. A count of CNG vehicle registrations would systematically undercount the number of CNG vehicles because many states do not require fuel type to be noted on the vehicle registration, and because many CNG heavy vehicles are conversions after first vehicle purchase. NHTSA therefore used data from NGVAmerica for estimating the fleet size of CNG heavy vehicles.

For estimating the annual average VMT for heavy vehicles, NHTSA reviewed a published business model[33] for heavy vehicle fleet operations that evaluated the benefit of converting to natural gas fuel over diesel fuel.[34] The model took into account that a CNG heavy vehicle is on average about $40,000 more expensive than a similar conventional diesel engine heavy vehicle. The model also considered the price differential between diesel and natural gas, the cost of fueling infrastructure, vehicle maintenance costs, and the relative fuel economy of CNG and diesel vehicles to determine the minimum annual average VMT per CNG vehicle for a 20 percent return on investment. The model indicates that for a price differential of $1.25 per gallon between diesel and natural gas, the minimum annual average VMT per CNG vehicle required to maintain a 20 percent return on investment is 75,000 miles for a medium duty vehicle and 123,000 miles for a heavy duty vehicle. Based on this information, to harmonize these numbers with current label, the agency selected an annual average VMT for medium duty vehicles of 72,000 miles and that for heavy duty vehicles of 108,000 miles to calculate visual inspection costs. Therefore, CNG fuel containers on heavy duty vehicles require on average about 3 visual inspections annually, and those on medium duty vehicles require on average about 2 visual inspections annually under the current visual inspection label specified in FMVSS No. 304. We seek comment on the accuracy of this model, and on the reasonableness of its underlying assumptions.

The proposed periodic visual inspection interval of 12 months for CNG fuel containers on heavy vehicles would reduce the average number of visual inspections in a year by 2 for heavy duty vehicles and by one for medium duty vehicles, assuming that vehicle operators followed the label. Using the above information, NHTSA estimated the total cost savings from the proposed update of the visual inspection label for the CNG heavy vehicle fleet in the future when all the CNG heavy vehicles have CNG fuel containers with the proposed visual inspection label (Table 3). The analysis in Table 3 assumes that the CNG heavy vehicle fleet size in the future when all the CNG heavy vehicles would be equipped with the updated visual inspection label is the same as the current CNG medium and heavy duty vehicle fleet size and assumes that all vehicles will have inspections as directed by the label.

[30] Baker, et al., ''Alternative Fuel Vehicle Forecasts (April 2016),'' Texas A&M Transportation Institute, *https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC-14-28F.pdf.*

[31] U.S. Energy Information Administration, Annual Energy Outlook 2017, *https://www.eia.gov/outlooks/aeo/.*

[32] *http://www.ngvamerica.org/vehicles/for-fleets/.*

[33] Dee, Anna Lea, ''What Set of Conditions Would Make the Business Case to Convert Heavy Trucks to Natural Gas?—a Case Study,'' National Energy Policy Institute, 2012. This document is available in the docket of this NPRM.

[34] NHTSA did not use the VMT data in the Annual Energy Outlook 2017 (AEO2017) because the agency believes it underestimates the size of the CNG heavy vehicle fleet, and it is not consistent with the results from the business models for CNG vehicle fleet operations.

TABLE 3—ESTIMATES OF ANNUAL COST SAVINGS FROM THE PROPOSED UPDATE OF THE VISUAL INSPECTION LABEL FOR CNG HEAVY VEHICLES

[Estimates in 2017 dollars and based on the current heavy vehicle fleet size]

	Cost of Inspection		
	Low	Average	High
Cost of Single Inspection (a)	$500	$650	$800
Number of CNG Heavy Duty Vehicles (b)	39,500	39,500	39,500
Number of CNG Medium Duty Vehicles (c)	25,800	25,800	25,800
Number of Inspections Reduced Per Year for Heavy Duty Vehicles by the Proposal (d)	2	2	2
Number of Inspections Reduced Per Year for Medium Duty Vehicles by the Proposal (e)	1	1	1
Cost Reduction for Heavy Duty Vehicles, (f) = (a) × (b) × (d) in Millions (M)	$39.50 M	$51.35 M	$63.20 M
Cost Reduction for Medium Duty Vehicles, (g) = (a) × (c) × (e) in Millions (M)	$12.90 M	$16.77 M	$20.64 M
Total Cost Saving (f) + (g) in Millions (M)	$52.40 M	$68.12 M	$83.84 M

The potential annual cost savings because of the reduced number of CNG fuel container inspections per year for heavy vehicles ranges between $52.40 million to $83.84 million with an average cost savings of $68.12 million when the proposed inspection label is fully implemented into the fleet, assuming the current CNG heavy vehicle fleet size remains unchanged. The above analysis is likely a low estimate of the total cost saving because projections indicate the annual sale of CNG heavy vehicles used in commercial fleets will increase from 4,250 in 2015 to 68,000 in 2040.[35] [36] NHTSA seeks comment on the above analysis and the data used to support the analysis.

As noted above, given the extremely low failure rate of CNG containers in the field (19 failures over 33 years), NHTSA has tentatively concluded that changing the periodic visual inspection interval of CNG fuel containers on heavy vehicles from ''36 months or 36,000 miles, whichever comes first,'' to an annual inspection would not result in a reduction in safety. NHTSA notes that the agency has reached out to multiple potential sources of CNG vehicle data, including businesses that use CNG trucks, businesses that conduct inspections of CNG trucks, and trade associations that represent users of CNG trucks, for information on potential safety impacts of reduced inspections (in terms of both reduced potential damage discovery and reduced potential damage caused by intrusive tank teardown inspections). While we received some anecdotal feedback about the infrequency with which visual inspections caught potential safety issues, no source could provide us with comprehensive, substantive data on the effectiveness of periodic visual inspections. Accordingly, the agency seeks comment and input on CNG vehicle incidents in the field, especially regarding the effectiveness of multiple annual visual inspections, and the risk of damage to CNG tanks as a result of excessive inspection.

The agency notes that, since it is not changing the requirement that all vehicles need a label, it does not believe that the textual changes to the label proposed here will lead to any significant costs associated with creating and installing the label. NHTSA estimates a de minimis cost impact, as manufacturers would be replacing a current label with a new one with different wording. The new label may need to be slightly larger because of wording changes, and there would be a one-time cost of redesigning the label, but all in all the costs of this rulemaking would be negligible when distributed among all CNG vehicles sold.

VII. Proposed Compliance Date

We believe the proposed change in the visual inspection label on CNG fuel containers would alleviate the cost burden associated with multiple visual inspections per year for heavy vehicles and is supported by CNG fuel container manufacturers, CNG vehicle manufacturers and integrators, operators of CNG-fueled heavy vehicle fleets, and voluntary standards organizations that are members of NGVAmerica.[37] Therefore, we are proposing a compliance date of one year after the date of publication of the final rule in the **Federal Register**, with optional early compliance permitted. We believe one year is sufficient time to make needed changes to the visual inspection label for CNG fuel containers with no additional cost, and that permitting early compliance will provide manufacturers with flexibility.

VIII. Rulemaking Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Orders 12866 and 13563. This action was not reviewed by the Office of Management and Budget under these executive orders. This NPRM is not considered to be significant under the Department of Transportation's regulatory policies and procedures (44 FR 11034; Feb. 26, 1979). NHTSA is proposing to modify the required label for visual inspection of CNG fuel containers to specify that the container should be visually inspected for damage and deterioration after a motor vehicle accident or fire, and either (a) at least every 12 months when installed on a vehicle with a GVWR greater than 4,536 kg or (b) at least every 36 months or 36,000 miles, whichever comes first, when installed on a vehicle with a GVWR less than or equal to 4,536 kg. Based on an analysis of CNG fuel container failures in the field, NHTSA believes this change will not lead to a reduction in safety. NHTSA believes that the only substantive effect of this proposal would be to eliminate unnecessary visual inspections of CNG

[35] Baker, et al., ''Alternative Fuel Vehicle Forecasts (April 2016),'' Texas A&M Transportation Institute, *https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC-14-28F.pdf.*

[36] While NHTSA did not use the AEO2017 data in its cost/benefit analysis due to underreporting of the current size of the CNG fueled heavy vehicle fleet, we note that the AEO2017 data estimates an increase in the CNG medium and heavy duty vehicle fleet by 2040. According to AEO2017 projected estimates, there would be 16,335 CNG medium duty vehicles and 74,469 CNG heavy duty vehicles in 2040. By contrast, the AEO2017 estimates that in 2015, there were 2,150 CNG medium duty vehicles and 22,350 CNG heavy duty vehicles.

[37] Members of NGVAmerica include the CSA group (a standards development organization in North America), manufacturers of CNG fuel containers, manufacturers and integrators of CNG-fueled vehicles, and CNG vehicle fleet operators. *http://www.ngvamerica.org/about-us/.*

fuel containers by operators of high-mileage commercial CNG vehicles.

NHTSA estimates the proposed change would potentially reduce the number of visual inspections per year by approximately 2 inspections for heavy duty CNG vehicles and by approximately 1 inspection for medium duty CNG vehicles. The agency further estimates that the elimination of these visual inspections will result in an average annual cost savings of $68.12 million when fully implemented into the fleet, assuming the current CNG heavy vehicle fleet size remains unchanged.

Executive Order 13771

Executive Order 13771 titled ''Reducing Regulation and Controlling Regulatory Costs,'' directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' are subject to these requirements. As discussed below, this rule is not a significant rule under Executive Order 12866 and, accordingly, is not subject to the offset requirements of 13771.

NHTSA has determined that this NPRM is a deregulatory action under E.O. 13771, as it imposes no costs on manufacturers of CNG fuel containers, who must already meet the current visual inspection labeling requirement, and it proposes changes to FMVSS No. 304 that would have the effect of reducing the cost burden of multiple visual inspections of CNG fuel containers on heavy vehicles without any loss in safety, as described above.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) unless the head of an agency certifies the proposal will not have a significant economic impact on a substantial number of small entities. The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR part 121.105(a)). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal will not have a significant economic impact on a substantial number of small entities.

I certify this NPRM would not have a significant impact on a substantial number of small entities. The changes proposed in this NPRM are entirely deregulatory; any small operators who may be affected by this NPRM would see a reduction in maintenance costs because of reduced number of CNG fuel container inspections.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), as amended. The agency has determined that implementation of this action will not have an adverse impact on the quality of the human environment. The modification in the visual inspection label for CNG fuel containers would have the consequence of reducing the annual inspection costs for CNG heavy vehicle owners and operators, which would make them more cost-effective in fleet operations and incentivize their purchase by fleet operators.

Executive Order 13132 (Federalism)

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded the proposal does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal does 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.''

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision:

''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1).

It is this statutory command by Congress (and not today's proposed rulemaking) that preempts any non-identical State legislative and administrative law addressing the same aspect of performance, so consultation would be inappropriate.

Second, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law. That possibility is dependent upon there being an actual conflict between a FMVSS and the State requirement. If and when such a conflict exists, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000), finding implied preemption of state tort law on the basis of a conflict discerned by the court,[38] not on the basis of an intent to preempt asserted by the agency itself.

NHTSA has considered, pursuant to Executive Orders 13132 and 12988, whether the proposals of this NPRM could or should preempt State common law causes of action. To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of this proposal and finds that this NPRM is not intended to preempt State tort law that effectively imposes a higher standard on regulated entities than that would be established by today's proposed rule. The change proposed in this NPRM amends a labeling requirement that applies to newly manufactured CNG fuel containers; it does not to conflict with the establishment of a higher standard of safety by means of State tort law that applies to the same subject matter (*i.e.,* adequate labeling of CNG fuel containers). Without any conflict, there could not be any implied preemption of state law, including state tort law.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb.

[38] The conflict was discerned based upon the nature (*e.g.,* the language and structure of the regulatory text) and the safety-related objectives of FMVSS requirements in question and the impact of the State requirements on those objectives.

7, 1996), requires Executive agencies make every reasonable effort to ensure the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Privacy Act

All submissions, including public comments on this NPRM, will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There are no information collection requirements associated with this NPRM.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, as amended by Public Law 107–107 (15 U.S.C. 272 note), directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the SAE International. The NTTAA directs us to provide Congress (through OMB) with explanations when the agency decides not to use available and applicable voluntary consensus standards.

FMVSS No. 304 has historically drawn largely from ANSI NGV 2, and the proposed changes in this NPRM to the visual inspection label were made in accordance with data provided by NGVAmerica and ATA and the recommendations developed by industry technical working groups.[39]

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation, with base year of 1995). UMRA also requires an agency issuing an NPRM or final rule subject to the Act to select the ''least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.'' This NPRM would not result in a Federal mandate that will likely result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation, with base year of 1995).

Executive Order 13609 (Promoting Regulatory Cooperation)

The policy statement in section 1 of Executive Order 13609 provides, in part: the regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

The European regulation for CNG vehicles, ECE R.110, ''I. Specific components of motor vehicles using compressed natural gas (CNG) and/or liquefied natural gas (LNG) in their propulsion system,'' [40] requires a detailed visual inspection of CNG fuel containers on vehicles at least every 48 months and after an accident or fire. However, the working pressure of CNG fuel containers in Europe is 20 Megapascals (MPa) (3,000 pounds per square inch (psi)), while that in the U.S. is typically 26 MPa (3,600 psi). The higher container pressure in the U.S. necessitates more frequent visual inspections than that conducted in Europe. Therefore, NHTSA did not consider harmonizing with ECE R.110.

Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please write to us with your views.

[39] The NGVAmerica Technology & Development Committee's Guidance on Fuel System Inspection published in November 2017 specifies annual visual inspection for CNG fuel containers on heavy vehicles as a practical approach to inspection and maintenance of the fuel container and fuel system which would match intervals and procedures with other vehicle maintenance tasks, such as engine oil and filter changes, that are conducted on an annual basis per FMCSR 396.17. The CSA group, which maintains NGV 2, is considering modifying the inspection interval in NGV 2 to an annual inspection following the NGVAmerica Technology &Development Committee's Guidance document.

[40] *http://www.unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2015/R110r3e.pdf.*

IX. Public Participation

How do I prepare and submit comments?

- To ensure that your comments are correctly filed in the Docket, please include the Docket Number found in the heading of this document in your comments.
- Your comments must not be more than 15 pages long.[41] NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments, and there is no limit on the length of the attachments.
- If you are submitting comments electronically as a PDF (Adobe) file, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions.
- Please note that pursuant to the Data Quality Act, in order for substantive data to be relied on and used by NHTSA, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, NHTSA encourages you to consult the guidelines in preparing your comments. DOT's guidelines may be accessed at *https://www.transportation.gov/regulations/dot-information-dissemination-quality-guidelines.*

Tips for Preparing Your Comments

When submitting comments, please remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions you make and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- To ensure that your comments are considered by the agency, make sure to submit them by the comment period deadline identified in the DATES section above.

For additional guidance on submitting effective comments, visit: *https://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under FOR FURTHER INFORMATION CONTACT. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the docket at the address given above under ADDRESSES. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512)

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given above under ADDRESSES. The hours of the docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material. You can arrange with the docket to be notified when others file comments in the docket. See *www.regulations.gov* for more information.

List of Subjects in 49 CFR Part 571

Imports, motor vehicles, motor vehicle safety.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. In § 571.304, revise paragraph S7.4(g) to read as follows.

§ 571.304 Standard No. 304; Compressed natural gas fuel container integrity.

* * * * *

S7.4 * * *

(g) The statement: ''This container should be visually inspected for damage and deterioration after a motor vehicle accident or fire, and either (a) at least every 12 months when installed on a vehicle with a GVWR greater than 4,536 kg or (b) at least every 36 months or 36,000 miles, whichever comes first, when installed on a vehicle with a GVWR less than or equal to 4,536 kg.''

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Heidi Renate King,

Deputy Administrator.

The following appendix will not appear in the Code of Federal Regulations.

X. Appendix to the Preamble: Regulatory History of the CNG Visual Inspection Label Requirement

NHTSA first proposed a visual inspection label requirement for CNG fuel containers in a Supplemental Notice of Proposed Rulemaking (SNPRM) on December 19, 1994.[42] The original language proposed for the visual inspection label stated that a CNG fuel container should be periodically inspected at least every 36 months but did not include a mileage requirement, which was consistent with American National Standards Institute (ANSI) Natural Gas Vehicle (NGV) guidelines at that time.[43]

[41] 49 CFR 553.21.

[42] 59 FR 65299, December 19, 1994.

[43] ANSI NGV 2—Compressed Natural Gas Vehicle Fuel Containers. Section 2.1.3 Periodic In-Service Inspection states, ''Each container shall be visually inspected at least every 36 months, or at the time

Continued

NHTSA received several comments in response to the SNPRM, which the agency incorporated into its November 24, 1995 final rule establishing the visual inspection label requirement.[44] First, in response to comments by Navistar and a 1994 publication by the Natural Gas Vehicle Coalition entitled ''Natural Gas Vehicle Inspection Program,'' the agency lowered the time interval on the inspection label to 12 months. This change was intended to reduce the possibility that damage caused by external factors would go undetected and lead to container failure. In addition, in response to comments by Ford, the final rule included a mileage interval in addition to a time interval because mileage exposure could also be a factor in leading to premature container failure due to exterior damage. We explained in the final rule that we selected a 12-month or 12,000-mile interval because it was consistent with the recommended interval for many motor vehicle warranties and routine maintenance items. As a result of these changes, the final rule required that the visual inspection label state that CNG fuel container should be visually inspected for damage and deterioration at least every 12 months or 12,000 miles, whichever comes first.

After issuing the November 24, 1995 final rule, NHTSA received several petitions for reconsideration requesting that the CNG fuel container inspection interval on the CNG fuel container label be changed to every 36 months instead of every 12 months. The petitioners argued that a 36-month time interval for visual inspections harmonized with draft international standards, and moreover that field data suggested that an annual visual inspection time interval would not have prevented any known container failures. The petitioners also expressed concern about the additional cost of annual inspections and the increased risk of container damage due to frequent inspections that require disassembly and assembly of components.

In response to these petitions, the visual inspection label was amended in a final rule issued on September 6, 1996, which changed the label's visual inspection statement to the current interval of ''36 months or 36,000 miles, whichever comes first.'' [45] NHTSA explained in the September 6, 1996 final rule that while visual inspection of a CNG fuel container may detect some conditions that indicate a potential failure, the Agency agreed with the petitioners that a 12-month or 12,000 mile inspection interval would be excessive. Moreover, the Agency noted that a 12-month inspection interval would not have prevented two publicized CNG fuel container failures because they were caused by stress corrosion cracking which is internal to the container and therefore would not have been identifiable during a visual inspection of the container's exterior. The agency also explained that a time interval of 36 months was consistent with industry and voluntary international standards.[46]

NHTSA has not amended the statement on the visual inspection label required under S7.4(g) since the September 6, 1996 final rule.

[FR Doc. 2019–12895 Filed 6–20–19; 8:45 am]

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of any re-installation, for external damage and deterioration.''

[44] 60 FR 57943.

[45] 61 FR 47086, September 6, 1996 final rule.

[46] Specifically, the redrafted the Natural Gas Vehicle Coalition (NGVC) voluntary standard and the draft International Standards Organization (ISO) standard for CNG cylinder inspection.

Notices

Federal Register

Vol. 84, No. 120

Friday, June 21, 2019

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0029]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the Horse Protection Program and enforcement of the Horse Protection Act.

DATES: We will consider all comments that we receive on or before August 20, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0029.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0029, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0029* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Horse Protection Act regulations, contact Dr. Kay Carter-Corker, Director, National Policy Staff, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737; (301) 851–3748. For more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Horse Protection Regulations.

OMB Control Number: 0579–0056.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: In 1970, Congress passed the Horse Protection Act (HPA, 15 U.S.C. 1821 *et seq.*), which was enacted to prevent showing, exhibiting, selling, or auctioning of "sore" horses, and certain transportation of sore horses in connection therewith, at horse shows, horse exhibitions, horse sales, and horse auctions. Soring is a process whereby chemical or mechanical agents, or a combination thereof, are applied to the limbs of a horse in order to exaggerate its gait. A "sore" horse is one that has been subjected to prohibited practices and, as a result, suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting or otherwise moving. A horse that is "sore" is prohibited from entering or participating in HPA-regulated events because exhibitors, owners, and trainers of such horse may obtain unfair advantage over individuals exhibiting horses that are not "sore."

To carry out the Act, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) administers and enforces the regulations in 9 CFR part 11. Part 11 delineates the responsibilities of horse industry organizations (HIOs), designated qualified persons (DQPs), management of regulated horse events, and persons who have control over regulated horses.

An HIO wishing to certify a program to license DQPs to inspect horses for compliance under the HPA must satisfy and abide by the requirements of the HPA and regulations. After requesting and receiving USDA certification from APHIS, HIOs must maintain an acceptable DQP program and recordkeeping systems. Managers and operators of HPA-regulated events may appoint and retain the services of DQPs to inspect and detect a horse that is sore or otherwise noncompliant with the HPA, and both managers and DQPs are required to provide and/or maintain certain information. Persons who own, train, show, exhibit, sell, transport, or otherwise have custody of, or direction or control over any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, horse exhibition, or horse sale or auction must also satisfy and abide by the requirements of the HPA and regulations.

APHIS works with HIOs on an ongoing basis to oversee their performance under the HPA. Throughout the year, APHIS uses training sessions, conference calls, and open letters to HIOs, event managers, exhibitors, owners, trainers, custodians, and farriers involved in HPA-covered activities to provide communication and feedback to address issues and strengthen enforcement under the Act. Data collected throughout the year from within APHIS and from the HIOs and event management provide an account of the HIOs' performance and progress toward eliminating the soring of horses and promoting fair competition. HIOs, through their certified licensing programs for DQPs, provide the primary means of detecting sored horses.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.09 hours per response.

Respondents: Horse custodians, event managers, HIOs, and DQPs.

Estimated annual number of respondents: 2,004.

Estimated annual number of responses per respondent: 19.

Estimated annual number of responses: 37,136.

Estimated total annual burden on respondents: 3,374 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of June 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–13149 Filed 6–20–19; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement 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 Georgia Advisory Committee (Committee) will hold a meeting via teleconference on Thursday July 11, 2019, at 1:00 p.m. EDT for the purpose of reviewing/finalizing their draft report regarding Civil Rights and The Olmstead Act (Disability Rights).

DATES: The meeting will be held on Thursday July 11, 2019, at 1:00 p.m. EDT.

Public Call Information: Dial: 877–260–1479, Conference ID: 7297000.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. 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 1–800–877–8339 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 Programs 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 Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit 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, Georgia Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov*, or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion
 Civil Rights in Georgia: The Olmstead Act (Disability Rights)
Public Comment
Adjournment

Dated: June 18, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–13278 Filed 6–20–19; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2084]

Reorganization of Foreign-Trade Zone 16 Under Alternative Site Framework Sault Ste. Marie, Michigan

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Sault Ste. Marie Economic Development Corporation, grantee of Foreign-Trade Zone 16, submitted an application to the Board (FTZ Docket B–4–2019, docketed February 11, 2019) for authority to reorganize under the ASF with a service area of Chippewa County, Michigan, in and adjacent to the Sault Ste. Marie Customs and Border Protection port of entry, and FTZ 16's existing Site 1 would be categorized as a magnet site;

Whereas, notice inviting public comment was given in the **Federal Register** (84 FR 4767, February 19, 2019) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 16 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Site 1 if not activated within five years from the month of approval.

Dated: June 11, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2019–13124 Filed 6–20–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 4, 2019, the Department of Commerce (Commerce) published the *Initiation of Five-Year (*''*Sunset*''*) Reviews* (June 4, 2019), in which Commerce inadvertently omitted Oil Country Tubular Goods from Vietnam (A–552–817) from the list of cases that initiate June 2019. This notice serves to correct the *June 2019 Initiation of Five-Year (*''*Sunset*''*) Reviews Sunset Notice* for the aforementioned item.

DATES: Applicable (June 1, 2019).

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs and Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION: This correction notice for the advance notification of sunset reviews is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: June 17, 2019.

James Maeder,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–13254 Filed 6–20–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–087]

Steel Propane Cylinders From the People's Republic of China: 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 steel propane cylinders from the People's Republic of China (China).

DATES: Applicable June 21, 2019.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7851.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2018, Commerce published the *Preliminary Determination.*[1] In the *Preliminary Determination,* Commerce aligned the final determination in this countervailing duty investigation with the final determination in the companion less-than-fair-value investigation, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(4). A complete 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.[2]

The Issues and Decision Memorandum is a public document and is available 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, Room B–8024 of Commerce's main building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and electronic version are identical in content.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now June 17, 2019.

Period of Investigation

The period of investigation is January 1, 2017 through December 31, 2017.

Scope of the Investigation

The merchandise covered by this investigation is steel propane cylinders from China. For a complete description of the scope of this investigation, *see* Appendix I of this notice.

Scope Comments

During the course of this investigation and the concurrent less-than-fair-value investigations, Commerce received scope comments from interested parties. Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum,[4] which was issued concurrently with the *Preliminary Determination.* We did not receive any scope comments after the Preliminary Scope Decision Memorandum; therefore, the preliminary scope determination remains unchanged in the final determination.

Verification

As provided in section 782(i) of the Act, Commerce verified the subsidy information reported by the Government of China (GOC) and Shandong Huanri Group Co. Ltd. (Huanri) for use in our final determination. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.

Analysis of Subsidy Programs and Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision

[1] *See Steel Propane Cylinders From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 83 FR 54086 (October 26, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Steel Propane Cylinders from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Steel Propane Cylinders from the People's Republic of China (China) and Thailand: Scope Decision Memorandum for the Preliminary Antidumping Duty (AD) and Countervailing Duty (CVD) Determinations,'' dated December 18, 2018 (Preliminary Scope Memorandum).

Memorandum. A list of the issues raised by parties and responded to by Commerce are in the Issues and Decision Memorandum, attached at Appendix II.

Changes Since the *Preliminary Determination*

Based on our analysis of the comments received from the interested parties and our findings at verification, we made certain changes to the respondents' subsidy rate calculations since the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

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 gives rise to a benefit to the recipient, and that the subsidy is specific.[5] In making these findings, Commerce relied, in part, on facts otherwise available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, Commerce drew an adverse inference where appropriate in selecting from among the facts otherwise available.[6] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(l)(B)(i)(I) of the Act, we calculated a rate for Huanri, a producer/exporter of subject merchandise selected for individual examination in this investigation. With regard to TPA Metals and Machinery (SZ) Co. Ltd., an additional producer/exporter selected for individual examination, as well as Guangzhou Lion Cylinders Co. Ltd.; Hubei Daly LPG Cylinder Manufacturer Co. Ltd.; Taishan Machinery Factory Ltd.; Wuyi Xilinde Machinery Manufacture Co., Ltd.; and Zhejiang Jucheng Steel Cylinder Co., Ltd., for the reasons described in the *Preliminary Determination,* Commerce assigned a rate based entirely on adverse facts available (AFA) pursuant to section 776(b) of the Act. No interested party commented on our preliminary decision to assign these six companies a rate based entirely on AFA, and so for purposes of this final determination, we continue to assign the non-cooperating companies a rate based entirely on AFA.

Section 705(c)(5)(A) of the Act provides that in the final determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the countervailable subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Huanri is the only respondent for which Commerce calculated a weighted-average countervailable subsidy rate that is not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, for purposes of determining the ''all-others'' rate, and pursuant to section 705(c)(5)(A) of the Act, we are using the subsidy rate calculated for Huanri.

Commerce determines the total estimated net countervailable subsidy rates to be the following:

Company	Subsidy rate (percent)
Guangzhou Lion Cylinders Co. Ltd	142.37
Hubei Daly LPG Cylinder Manufacturer Co. Ltd	142.37
Shandong Huanri Group Co. Ltd	37.91
Taishan Machinery Factory Ltd	142.37
TPA Metals and Machinery (SZ) Co. Ltd	142.37
Wuyi Xilinde Machinery Manufacture Co., Ltd	142.37
Zhejiang Jucheng Steel Cylinder Co., Ltd	142.37
All Others	37.91

Disclosure

We will disclose the calculations performed within five days of public announcement of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all appropriate entries of steel propane cylinders from China, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after October 26, 2018, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after February 23, 2019, but to continue the suspension of liquidation of all entries from October 26, 2018 through February 22, 2019.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, will reinstate the suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated countervailing duties for such entries of subject merchandise 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 Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final affirmative determination that countervailable subsidies are being provided to producers and exporters of steel propane cylinders from China. 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, or sales (or the likelihood of sales) for importation of steel propane cylinders from China no later than 45 days after this 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 a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the destruction 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

[5] *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.

[6] *See* sections 776(a), (b), and 782(d) of the Act.

judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: June 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products subject to this investigation are steel cylinders for compressed or liquefied propane or other gases (Steel Propane Cylinders) meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specifications 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or United Nations pressure receptacle standard ISO 4706 and otherwise meeting the description provided below. The scope includes steel propane cylinders regardless of whether they have been certified to these specifications before importation. Steel propane cylinders range from 2.5 pound nominal gas capacity (approximate 6 pound water capacity and approximate 4–6 pound tare weight) to 42 pound nominal gas capacity (approximate 100 pound water capacity and approximate 28–32 pound tare weight). Steel propane cylinders have two or fewer ports and may be imported assembled or unassembled (*i.e.,* welded or brazed before or after importation), with or without all components (including collars, valves, gauges, tanks, foot rings, and overfill prevention devices), and coated or uncoated. Also included within the scope are drawn cylinder halves, unfinished propane cylinders, collars, and foot rings for steel propane cylinders.

An ''unfinished'' or ''unassembled'' propane cylinder includes drawn cylinder halves that have not been welded into a cylinder, cylinders that have not had flanges welded into the port hole(s), cylinders that are otherwise complete but have not had collars or foot rings welded to them, otherwise complete cylinders without a valve assembly attached, and cylinders that are otherwise complete except for testing, certification, and/or marking.

This investigation also covers steel propane cylinders that meet, are produced to meet, or are certified as meeting, other U.S. or Canadian government, international, or industry standards (including, for example, American Society of Mechanical Engineers (ASME), or American National Standard Institute (ANSI)), if they also meet, are produced to meet, or are certified as meeting USDOT Specification 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or a United Nations pressure receptacle standard ISO 4706.

Subject merchandise also includes steel propane cylinders that have been further processed in a third country, including but not limited to, attachment of collars, foot rings, or handles by welding or brazing, heat treatment, painting, testing, certification, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope steel propane cylinders.

Specifically excluded are seamless steel propane cylinders and propane cylinders made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight), aluminum, or composite fiber material. Composite fiber material is material consisting of the mechanical combination of two components: fiber (typically glass, carbon, or aramid (synthetic polymer)) and a matrix material (typically polymer resin, ceramic, or metallic).

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers 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

[FR Doc. 2019–13257 Filed 6–20–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–086]

Steel Propane Cylinders From the People's Republic of China: 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 steel propane cylinders from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable June 21, 2019.

FOR FURTHER INFORMATION CONTACT: Stephanie Berger or Laura Griffith, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2483 or (202) 482–6430, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 2018, Commerce published its *Preliminary Determination* of sales at LTFV of steel propane cylinders from China.[1] A complete

[1] *See Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measures,* 83 FR 66675 (December 27, 2018) (*Preliminary*

Continued

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.[2]

The Issues and Decision Memorandum is a public document and is available 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, Room B–8024 of Commerce's main building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and electronic version are identical in content.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this investigation is now June 17, 2019.

Period of Investigation

The POI is October 1, 2017 through March 31, 2018.

Scope of the Investigation

The merchandise covered by this investigation is steel propane cylinders from China. For a complete discussion of the scope of this investigation, *see* Appendix I of this notice.

Scope Comments

During the course of this investigation and the concurrent countervailing duty (CVD) investigation, Commerce received scope comments from interested parties. Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum,[4] which was issued concurrently with the *Preliminary Determination.* We did not receive any scope comments after the Preliminary Scope Decision Memorandum; therefore, the preliminary scope determination remains unchanged in the final determination.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), Commerce verified the sales and cost data reported by Hong Kong GSBF Company Ltd. and GSBF TANK Inc. (collectively, GSBF) and Shandong Huanri Group Co., Ltd. (Huanri) 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 the respondents.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce are in the Issues and Decision Memorandum, attached at Appendix II.

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 both respondents since the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

China-Wide Entity

For the reasons explained in the *Preliminary Determination,* we are continuing to find that the use of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, is appropriate and are applying a rate based entirely on AFA to the China-wide entity. Commerce did not receive timely responses to its quantity and value (Q&V) questionnaire, separate rate applications, or separate rate supplemental questionnaires from certain exporters and/or producers of subject merchandise that were named in the petition and to which Commerce issued Q&V questionnaires.[5] TPA Metals and Machinery (DG) Co. Ltd., which did respond to the Q&V questionnaire and was initially selected as a mandatory respondent in this investigation, failed to respond to Commerce's initial questionnaire, and was thus deemed non-responsive.[6] As these non-responsive companies in China did not demonstrate that they are eligible for separate rate status, Commerce continues to consider them to be a part of the China-wide entity. Consequently, we continue to find that the China-wide entity withheld requested information, significantly impeded the proceeding, and failed to cooperate to the best of their abilities, and thus we are continuing to base the China-wide entity's rate on AFA.

China-Wide Rate

In selecting the AFA rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[7] Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) The highest dumping margin alleged in the petition; or, (b) the highest calculated dumping margin of any respondent in the investigation.[8] As AFA, Commerce has assigned to the China-wide entity the rate of 108.60 percent.

Combination Rates

In the *Initiation Notice,* Commerce stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[9] Accordingly, we have assigned combination rates to

Determination), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Steel Propane Cylinders from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Steel Propane Cylinders from the People's Republic of China (China) and Thailand: Scope Decision Memorandum for the Preliminary Antidumping Duty (AD) and Countervailing Duty (CVD) Determinations,'' dated December 18, 2018 (Preliminary Scope Decision Memorandum).

[5] *See* Preliminary Decision Memorandum at 15.

[6] *Id.*

[7] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethyl cellulose from Finland,* 69 FR 77216, 77219 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethyl Cellulose from Finland,* 70 FR 28279, 28279 (May 17, 2005).

[8] *See, e.g., Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17436, 17438 (March 26, 2012); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum.

[9] *See Steel Propane Cylinders from the People's Republic of China, Taiwan, and Thailand: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 28196, 28201 (June 18, 2018) (*Initiation Notice*).

certain companies, as provided in the ‘‘Final Determination’’ section below.

Final Determination

Commerce determines that the following weighted-average dumping margins exist for the period October 1, 2017 through March 31, 2018:

Producer	Exporter	Weighted-average margin (percent)	Cash deposit adjusted for subsidy offset (percent)
GSBF Tank Inc	Hong Kong GSBF Company Limited	37.41	3.94
Shandong Huanri Group Co. Ltd	Shandong Huanri Group Co. Ltd	25.52	0.0
Jiaxing Pressure Vessel Factory	Jiaxing Pressure Vessel Factory	26.28	0.0
China-Wide Entity [10]		108.60	75.13

Disclosure

We will disclose the calculations performed within five days of public announcement of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of steel propane cylinders from China, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after December 27, 2018, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**. 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.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In this case, we have made an affirmative determination for domestic subsidy pass-through and export subsidies for certain respondents. However, suspension of liquidation for provisional measures in the companion CVD case has been discontinued; therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those subsidies at this time.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which NV exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combination listed in the table above will be the rate identified for that combination in the table; (2) for all combinations of exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-Chinese exporters of the merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. 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, or sales (or the likelihood of sales) for importation of steel propane cylinders from China 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, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an 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 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 violation subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: June 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is steel cylinders for compressed or liquefied propane or other gases (steel propane cylinders) meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specifications 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or United Nations pressure receptacle standard ISO 4706 and otherwise meeting the description provided below. The scope includes steel propane cylinders regardless of whether they have been certified to these specifications before importation. Steel propane cylinders range from 2.5 pound nominal gas capacity (approximate 6 pound water capacity and approximate 4–6 pound tare weight) to 42 pound nominal gas capacity (approximate 100 pound water capacity and approximate 28–32 pound tare

[10] The China-wide entity includes: Hubei Daly LPG Cylinder Manufacturer Co. Ltd., Taishan Machinery Factory Ltd., TPA Metals and Machinery (DG) Co. Ltd., Wuyi Xilinde Machinery Manufacture Co., Ltd., and Zhejiang Jucheng Steel Cylinder Co., Ltd.

weight). Steel propane cylinders have two or fewer ports and may be imported assembled or unassembled (*i.e.,* welded or brazed before or after importation), with or without all components (including collars, valves, gauges, tanks, foot rings, and overfill prevention devices), and coated or uncoated. Also included within the scope are drawn cylinder halves, unfinished propane cylinders, collars, and foot rings for steel propane cylinders.

An ''unfinished'' or ''unassembled'' propane cylinder includes drawn cylinder halves that have not been welded into a cylinder, cylinders that have not had flanges welded into the port hole(s), cylinders that are otherwise complete but have not had collars or foot rings welded to them, otherwise complete cylinders without a valve assembly attached, and cylinders that are otherwise complete except for testing, certification, and/or marking.

This investigation also covers steel propane cylinders that meet, are produced to meet, or are certified as meeting, other U.S. or Canadian government, international, or industry standards (including, for example, American Society of Mechanical Engineers (ASME), or American National Standard Institute (ANSI)), if they also meet, are produced to meet, or are certified as meeting USDOT Specification 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or a United Nations pressure receptacle standard ISO 4706.

Subject merchandise also includes steel propane cylinders that have been further processed in a third country, including but not limited to, attachment of collars, foot rings, or handles by welding or brazing, heat treatment, painting, testing, certification, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope steel propane cylinders.

Specifically excluded are seamless steel propane cylinders and propane cylinders made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight), aluminum, or composite fiber material. Composite fiber material is material consisting of the mechanical combination of two components: Fiber (typically glass, carbon, or aramid (synthetic polymer)) and a matrix material (typically polymer resin, ceramic, or metallic).

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers 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
Comment 1: Selection of Financial Statements to Value the Financial Ratios
Comment 2: Subsidy Rate Calculated for the Export Buyer's Credit Program
Comment 3: Surrogate Value Selections for Huanri and GSBF
A. Natural Gas for Huanri
B. Rubber Plug for GSBF
C. Teflon Tape for GSBF
D. Valve for GSBF
E. Steel Roll for GSBF
F. Steel Scrap for GSBF
Comment 4: Ministerial Errors and Other Issues
A. Errors in the Determination of the Surrogate Financial Ratios
B. Argon Conversion for Huanri and GSBF
C. Oxygen Gas Conversion for GSBF
D. Natural Gas Conversion for Huanri
E. Calculation of Market Economy Purchase for Overflow Protection Devices (OPDs) for Huanri
F. Misclassified Paint Variable in GSBF's Margin Calculation Program
G. Errors Identified in Huanri's Verification Report
VI. Recommendation

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–814]

Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that carbon steel butt-weld pipe fittings (butt-weld pipe fittings) exported from Malaysia, which were completed in Malaysia using finished or unfinished butt-weld pipe fittings sourced from the People's Republic of China (China), are circumventing the antidumping duty (AD) order on butt-weld pipe fittings from China. Commerce has also updated the language in the certification requirements and importer and exporter certifications that are appended to this notice.

DATES: Applicable June 21, 2019.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4047.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2018, Commerce published the *Preliminary Determination* of circumvention of the *Order.*[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.[2] 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 it is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Order

The products covered by the *Order* are carbon steel butt-weld pipe fittings. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Scope of the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers butt-weld pipe fittings exported from Malaysia to the United States, which were completed (*i.e.,* have undergone minor finishing processes, or were simply marked with ''Malaysia'' as the country of origin) in Malaysia using finished or unfinished butt-weld pipe fittings sourced from China (inquiry merchandise). This final ruling applies to all shipments of inquiry merchandise on or after the date of the initiation of this inquiry.

[1] *See Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty Order,* 83 FR 35205 (July 25, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum; *see also Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR 29702 (July 6, 1992) (*Order*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Methodology

Commerce is conducting this anti-circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying the Commerce's final determination, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this inquiry are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I. Based on our analysis of the results of Commerce's verification of questionnaire responses and the comments received, we made certain changes to the *Preliminary Determination.*

Final Affirmative Determination of Circumvention

As detailed in the Issues and Decision Memorandum, we determine that butt-weld pipe fittings exported from Malaysia, which were completed in Malaysia using finished or unfinished butt-weld pipe fittings from China, or were simply marked with ''Malaysia'' as the country of origin, are circumventing the *Order.* As such, we determine that it is appropriate to include this merchandise within the *Order* and to instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation and require cash deposits for any unliquidated entries of butt-weld pipe fittings from Malaysia, which were completed in Malaysia using finished or unfinished butt-weld pipe fittings from China, or were simply marked with ''Malaysia'' as the country of origin, as discussed below.

Continuation of Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(3), Commerce will direct CBP to continue to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of inquiry merchandise that were entered, or withdrawn from warehouse, for consumption on or after August 21, 2017, the date of initiation of the anti-circumvention inquiry.

The suspension of liquidation and cash deposit instructions will remain in effect until further notice. Commerce will instruct CBP to require AD cash deposits equal to the China-wide rate of 182.90 percent, unless the importer/exporter can demonstrate that the Chinese-origin finished or unfinished butt-weld pipe fittings completed in Malaysia were supplied by a Chinese manufacturer with a company-specific separate rate. In that instance, the cash deposit rate will be the rate of the Chinese butt-weld pipe fittings manufacturer that has its own rate.[3]

Butt-weld pipe fittings completed in Malaysia from finished and unfinished butt-weld pipe fittings that are not of Chinese-origin are not subject to this inquiry and are not included within the scope of the *Order* as a result of this final affirmative determination. Therefore, the suspension of liquidation and cash deposit requirements do not apply to such merchandise, subject to the following certification requirements. An importer of butt-weld pipe fittings from Malaysia claiming that its butt-weld pipe fittings were completed from finished and/or unfinished non-Chinese butt-weld pipe fittings must meet the certification and documentation requirements described in Appendices II, III, and IV. Commerce will instruct CBP to suspend liquidation and require cash deposits for entries where the importer/exporter cannot demonstrate that the imported merchandise was completed from non-Chinese origin finished or unfinished butt-weld pipe fittings. The AD cash deposits required on such entries will be equal to the China-wide rate of 182.90 percent, unless the importer/exporter can demonstrate that the Chinese-origin finished or unfinished butt-weld pipe fittings completed in Malaysia were supplied by a Chinese manufacturer with a company-specific separate rate. In that instance, the cash deposit rate will be the rate of the Chinese butt-weld pipe fittings manufacturer that has its own rate.

We determine that the following companies are not eligible for the certification process: Able Steel Pipes Sdn. Bhd, Alliance Fittings Industry Sdn Bhd, Anggerik Laksana Sdn. Bhd, Globefit Manufacturing Sdn Bhd, Hiap Teck Venture Bhd., JAKS Steel Industries Sdn Bhd, Luda Malaysia, Ltd., Pipefab Industries Sdn. Bhd, Solidbend Fittings & Flanges Sdn. Bhd., Southern Steel Bhd, and Wing Tiek Ductile Iron Pipe Sdn Bhd. Accordingly, importers of butt-weld pipe fittings from Malaysia that are produced and/or exported by these ineligible companies are similarly ineligible for the certification process with regard to those imports.

In the *Preliminary Determination,* Pantech Steel Industries Sdn. Bhd. (Pantech) and its importers were precluded from participating in the certification process. However, because Commerce has verified Pantech's ability to trace the country of origin for its shipments of butt-weld pipe fittings, we will allow Pantech and its importers to participate in the certification process for unliquidated entries of butt-weld pipe fittings from Malaysia that were entered, or withdrawn from warehouse, for consumption on or after August 21, 2017 (the initiation date of this anti-circumvention inquiry). For any unliquidated entries of butt-weld pipe fittings produced and/or exported by Pantech that were entered, or withdrawn from warehouse, for consumption on or after August 21, 2017, and through the day before the date of publication of this **Federal Register** notice, Commerce will instruct CBP to liquidate the entries without regard to AD duties if the importer provides both the importer and exporter certification and documentation requirements as described in Appendices II, III, and IV to CBP. An importer of butt-weld pipe fittings from Malaysia produced and/or exported by Pantech, which claims that its butt-weld pipe fittings were completed from finished and/or unfinished non-Chinese butt-weld pipe fittings, must meet the certification and documentation requirements described in Appendices II, III, and IV for such entries that were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this **Federal Register** notice.

Notification Regarding Administrative Protective Orders

This notice will serve as the only reminder to parties subject to administrative protective order (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 return/destruction or 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

These determinations are issued and published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

[3] *See, e.g., Glycine from the People's Republic of China: Preliminary Partial Affirmative Determination of Circumvention of the Antidumping Duty Order and Initiation of Scope Inquiry,* 77 FR 21532, 21535 (April 10, 2012), unchanged in *Glycine from the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order,* 77 FR 73426 (December 10, 2012).

Dated: June 14, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Merchandise Subject to the Anti-circumvention Inquiry
V. Period of Inquiry
VI. Changes Since the Preliminary Determination
VII. Statutory Framework
VIII. Use of Facts Available and Facts Available with Adverse Inference
IX. Anti-Circumvention Determination
X. Country-Wide Determination
XI. Certification for Use of Non-Chinese-Origin Butt Weld Pipe Fittings
XII. Discussion of the Issues
 Comment 1: Whether Commerce May Issue a Country-Wide Finding
 Comment 2: Whether Pantech Has Circumvented the *Order*
 Comment 3: Whether Pantech and Its Importers Should Be Allowed to Participate in the Certification Process
 Comment 4: Whether Solidbend Was Lawfully Subject to This Anti-Circumvention Inquiry
 Comment 5: Whether Solidbend Has Circumvented the *Order*
 Comment 6: Whether Commerce's Instructions to Suspend Liquidation and Require Cash Deposits Following the Preliminary Determination Were Lawful
XIII. Recommendation

Appendix II—Certification Requirements

Section 1 provides general instructions for the certification process applicable to all eligible importers and exporters of carbon steel butt-weld pipe fittings (butt-weld pipe fittings) from Malaysia. Section 2 provides the certification timing requirements for eligible companies other than Pantech Steel Industries Sdn. Bhd. (Pantech) and the importers of butt-weld pipe fittings produced and/or exported by firms other than Pantech. Section 3 provides the certification timing requirements for Pantech and the importers of butt-weld pipe fittings produced and/or exported by Pantech.

1. General Instructions

For all parties eligible for the certification process, the following requirements apply. If an importer imports butt-weld pipe fittings from Malaysia and claims that the butt-weld pipe fittings were completed in Malaysia using finished or unfinished butt-weld pipe fittings manufactured of non-Chinese origin, the importer is required to complete and maintain the importer certification, attached as Appendix III, and all supporting documentation. The importer is further required to maintain a copy of the exporter certification, discussed below and attached as Appendix IV, and all supporting documentation. The importer certification must be completed, signed, and dated within the timeframes specified in Sections 2 or 3 below (as appropriate). Where the importer uses a broker to facilitate the entry process, it should obtain the entry number from the broker. Agents of the importer, such as brokers, however, are not permitted to make this certification on behalf of the importer.

The exporter is required to complete and maintain the exporter certification, attached as Appendix IV, and is further required to provide the importer a copy of that certification and all supporting documentation. The exporter certification must be completed, signed, dated, and provided to the importer within the timeframes specified in Sections 2 or 3 below (as appropriate). The exporter certification should be completed by the party selling the merchandise manufactured in Malaysia to the United States, which is not necessarily the producer of the product.

The importer will not be required to submit the certifications or supporting documentation to U.S. Customs and Border Protection (CBP) as part of the entry process at this time. However, the importer and the exporter will be required to present the certifications and supporting documentation, to Commerce and/or CBP, as applicable, upon request by the respective agency. Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. The importer and exporter are required to maintain the certifications and supporting documentation for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries. If it is determined that the certification and/or documentation requirements in a certification have not been met, Commerce intends to instruct CBP to suspend, under the antidumping duty (AD) order on butt-weld pipe fittings from the People's Republic of China, A–570–814, all unliquidated entries for which these requirements were not met and require the importer to post applicable AD cash deposits equal to the rates as determined by Commerce. Commerce has established the following third-country case number in the Automated Commercial Environment (ACE): A–557–994 for such entries. Entries suspended under A–557–994 will be liquidated pursuant to applicable administrative reviews of the China AD order or through the automatic liquidation process.

For unliquidated entries (and entries for which liquidation has not become final) entered as non-AD/CVD type entries that were shipped and/or entered, or withdrawn from warehouse, for consumption during the period, August 21, 2017 (the date of initiation of this anti-circumvention inquiry) through the day prior to the date of publication of the final determination of this anti-circumvention inquiry in the **Federal Register**, for which certifications are required to be maintained in accordance with the instructions above, importers should file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-antidumping entries (*e.g.,* type 01) to antidumping entries (*i.e.,* type 03, 06, 07, 34, and 38) entries and report those entries using the third-country case number, A–557–994. Similarly, the importer should pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties.

2. Certification Timing Requirements for Companies Other Than Pantech and Its Importers

A. For Entries on or after August 21, 2017 Through July 25, 2018

For entries suspended pursuant to the *Preliminary Determination* and continue to be suspended pursuant to the final determination of this anti-circumvention inquiry that were shipped and/or entered, or withdrawn from warehouse, for consumption on or after August 21, 2017 (the date of initiation of this anti-circumvention inquiry) through July 25, 2018 (the date of publication of the *Preliminary Determination* in the **Federal Register**), for which certifications are required, the importer certification should have been completed, and the exporter certification should have been completed and provided to the importer, no later than September 8, 2018 (45 days after the date of publication of the *Preliminary Determination* in the **Federal Register**).

Accordingly, where appropriate, the relevant bullet in the certification should have been edited to reflect that the certification was completed within the time frame specified in the paragraph above. For example, the bullet in the importer certification that reads: ''This certification was completed by the time of filing the Entry Summary,'' could be edited as follows: ''The shipments/products referenced herein entered before the 07/25/2018 publication of the *Preliminary Determination* **Federal Register** notice. This certification was completed on mm/dd/yyyy, within 45 days of that **Federal Register** notice publication.'' Similarly, the bullet in the exporter certification that reads, ''This certification was completed by the time of shipment,'' could be edited as follows: ''The shipments/products referenced herein shipped before the 07/25/2018 publication of the *Preliminary Determination Federal Register* notice. This certification was completed on mm/dd/yyyy, within 45 days of that **Federal Register**notice publication.'' For such entries/shipments, importers and exporters each have the option to complete a blanket certification covering multiple entries/shipments, individual certifications for each entry/shipment, or a combination thereof.

B. For Entries on or After July 26, 2018 Through August 31, 2018

For entries suspended pursuant to the *Preliminary Determination* and continue to be suspended pursuant to the final determination of this anti-circumvention inquiry that were shipped and/or entered, or withdrawn from warehouse, for consumption on or after July 26, 2018 through August 31, 2018, for which certifications are required, the importer certification should have been completed within 45 days after the date of Entry Summary and the exporter certification should have been completed and provided to the importer within 45 days after the date of shipment.

Accordingly, where appropriate, the relevant bullet in the certification should have been edited to reflect that the certification was completed within the time frame specified in the paragraph above. For example, the bullet in the importer certification that reads: ''This certification was completed by the time of filing the Entry Summary,'' could be edited as follows: ''The shipments/products referenced herein entered during the period 07/26/2018 through 08/31/2018. This certification was completed on mm/dd/yyyy, within 45 days of the date of entry.'' Similarly, the bullet in the exporter certification that reads, ''This certification was completed by the time of shipment,'' could be edited as follows: ''The shipments/products referenced herein shipped during the period 07/26/2018 through 08/31/2018. This certification was completed on mm/dd/yyyy, within 45 days of the date of shipment.'' For such entries/shipments, importers and exporters each have the option to complete a blanket certification covering multiple entries/shipments, individual certifications for each entry/shipment, or a combination thereof.

C. For Entries on or After September 1, 2018 Through the Day Prior to the Date of Publication of the Final Determination of This Anti-Circumvention Inquiry in the **Federal Register**

For entries suspended pursuant to the *Preliminary Determination* and continue to be suspended pursuant to the final determination of this anti-circumvention inquiry that were shipped and/or entered, or withdrawn from warehouse, for consumption on or after September 1, 2018 through the day prior to the date of publication of the final determination of this anti-circumvention inquiry in the **Federal Register** for which certifications are required, the importer certification should have been completed by the date of Entry Summary and the exporter certification should have been completed and provided to the importer by the date of shipment.

D. For Entries on or After the Date of Publication of the Final Determination of This Anti-Circumvention Inquiry in the **Federal Register**

For entries suspended pursuant to the *Preliminary Determination* and continue to be suspended pursuant to the final determination of this anti-circumvention inquiry that were shipped and/or entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination in the **Federal Register** for which certifications are required, the importer certification should be completed by the date of Entry Summary and the exporter certification should be completed and provided to the importer by the date of shipment. For such entries/shipments, the importers and exporters must use the updated certification forms in Appendices III and IV.

3. Certification Timing Requirements for Pantech and Its Importers

These timing requirements apply only to Pantech and its importers because they were not previously eligible for the certification process.

A. For Entries on or After August 21, 2017 Through the 30th Day After the Date of Publication of the Final Determination of This Anti-Circumvention Inquiry in the **Federal Register**

For entries of butt-weld pipe fittings from Pantech suspended pursuant to the *Preliminary Determination* of this anti-circumvention inquiry that were shipped and/or entered, or withdrawn from warehouse, for consumption during the period, August 21, 2017 (the date of initiation of this anti-circumvention inquiry) through the 30th day after the date of publication of the final determination in the **Federal Register**, for which certifications are required, the importer certification should be completed, and exporter certification should be completed and provided to the importer, within 45 days of the date of publication of the final determination in the **Federal Register**.

Accordingly, where appropriate, the relevant bullet in the certification should be edited to reflect that the certification was completed within the time frame specified in the paragraph above. For example, the bullet in the importer certification that reads: ''This certification was completed by the time of filing the Entry Summary,'' could be edited as follows: ''The shipments/products referenced herein entered during the period 08/21/2017 through the 30th day after the date of publication of the final determination in the **Federal Register**. This certification was completed on mm/dd/yyyy, within 45 days of that **Federal Register** notice publication.'' Similarly, the bullet in the exporter certification that reads, ''This certification was completed by the time of shipment,'' could be edited as follows: ''The shipments/products referenced herein shipped during the period 08/21/2017 through the 30th day after the date of publication of the final determination in the **Federal Register**. This certification was completed on mm/dd/yyyy, within 45 days of that **Federal Register** notice publication.'' For such entries/shipments, importers and exporters each have the option to complete a blanket certification covering multiple entries/shipments, individual certifications for each entry/shipment, or a combination thereof.

B. For Entries on or After the 31st Day After the Date of Publication of the Final Determination of This Anti-Circumvention Inquiry in the **Federal Register**

For entries of butt-weld pipe fittings from Pantech that were shipped and/or entered, or withdrawn from warehouse, for consumption, on or after the 31st day after the date of publication of the final determination of this anti-circumvention inquiry in the **Federal Register**, for which certifications are required, the importer certification should be completed by the date of Entry Summary and the exporter certification should be completed and provided to the importer by the date of shipment. For such entries/shipments, the importers and exporters must use the updated certification forms in Appendices III and IV.

Appendix III—Importer Certification

I hereby certify that:

- My name is {COMPANY OFFICIAL'S NAME} and I am an official of {IMPORTING COMPANY};
- I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the carbon steel butt-weld pipe fittings completed in Malaysia that entered under entry number(s) {INSERT ENTRY NUMBER(S)} and are covered by this certification. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, the importer should have ''direct personal knowledge'' of the importation of the product (*e.g.,* the name of the exporter) in its records;
- I have personal knowledge of the facts regarding the production of the imported products covered by this certification. ''Personal knowledge'' includes facts obtained from another party, (*e.g.,* correspondence received by the importer (or exporter) from the producer regarding the source of the input used to produce the imported products);
- The carbon steel butt-weld pipe fittings completed in Malaysia do not contain finished or unfinished butt-weld pipe fittings manufactured in the People's Republic of China;
- I understand that {IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, mill certificates, productions records, invoices, etc.) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;
- I understand that {IMPORTING COMPANY} is required to provide this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce);
- I understand that {IMPORTING COMPANY} is required to maintain a copy of the exporter's certification, (attesting to the production and/or export of the imported merchandise identified above), for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries;
- I understand that {IMPORTING COMPANY} is required to maintain and, upon request, provide a copy of the exporter's certification and supporting records to CBP and/or Commerce;
- I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;
- I understand that failure to maintain the required certification and/or failure to substantiate the claims made herein will result in:
    - suspension of liquidation of all unliquidated entries (and entries for which

liquidation has not become final) for which these requirements were not met; and

○ the requirement that the importer post applicable antidumping duty (AD) cash deposits (as appropriate) equal to the rates determined by Commerce;

• I understand that agents of the importer, such as brokers, are not permitted to make this certification;

• This certification was completed by the time of filing the Entry Summary; and

• I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature ____________________

NAME OF COMPANY OFFICIAL

____

TITLE

Appendix IV—Exporter Certification

I hereby certify that:

• My name is {COMPANY OFFICIAL'S NAME HERE} and I am an official of {NAME OF EXPORTING COMPANY};

• I have direct personal knowledge of the facts regarding the production and exportation of the carbon steel butt-weld pipe fittings identified below. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own books and records. For example, an exporter should have ''direct personal knowledge'' of the producer's identity and location.

• The carbon steel butt-weld pipe fittings completed in Malaysia do not contain finished or unfinished butt-weld pipe fittings manufactured in the People's Republic of China;

• I understand that {NAME OF EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, mill certificates, productions records, invoices, etc.) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;

• I understand that {NAME OF EXPORTING COMPANY} must provide this Exporter Certification to the U.S. importer by the time of shipment. ;

• I understand that {NAME OF EXPORTING COMPANY} is required to provide a copy of this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce);

• I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

• I understand that failure to maintain the required certification and/or failure to substantiate the claims made herein will result in:

○ Suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met; and

○ the requirement that the importer post applicable antidumping duty (AD) cash deposits (as appropriate) equal to the rates as determined by Commerce;

• This certification was completed at or prior to the time of shipment; and

• I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature ____________________

NAME OF COMPANY OFFICIAL

____

TITLE

____

DATE

[FR Doc. 2019–13252 Filed 6–20–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–839]

Steel Propane Cylinders From Thailand: 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 steel propane cylinders from Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable June 21, 2019.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3797 or (202) 482–3692, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 2018, Commerce published the *Preliminary Determination* of sales at LTFV of steel propane cylinders from Thailand.[1] On June 3, 2019, a public hearing was held at Commerce. A complete 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.[2]

The Issues and Decision Memorandum is a public document and is available 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, Room B–8024 of Commerce's main building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and electronic version are identical in content.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now June 17, 2019.

Period of Investigation (POI)

The POI is April 1, 2017 through March 31, 2018.

Scope of the Investigation

The merchandise covered by this investigation is steel propane cylinders from Thailand. For a complete discussion of the scope of this investigation, *see* Appendix I of this notice.

Scope Comments

During the course of this investigation and the concurrent countervailing duty (CVD) investigation, Commerce received scope comments from interested parties. Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum,[4] which was

[1] *See Steel Propane Cylinders from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 83 FR 66678 (December 27, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for Final Affirmative Determination in the Antidumping Duty Investigation of Steel Propane Cylinders from Thailand,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Steel Propane Cylinders from the People's Republic of China (China) and Thailand: Scope Decision Memorandum for the

issued concurrently with the *Preliminary Determination.* We did not receive any scope comments after the Preliminary Scope Decision Memorandum; therefore, the preliminary scope determination remains unchanged in the final determination.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), Commerce verified the sales and cost data reported by Sahamitr Pressure Container Public Company Limited (SMPC) 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 the respondent.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce are in the Issues and Decision Memorandum, attached at Appendix II.

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 SMPC since the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all-other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding any margins that are zero or *de minimis* or any margins determined entirely under section 776 of the Act. SMPC is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, for purposes of determining the ''all-others'' rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the estimated weighted-average dumping margin calculated for SMPC, as referenced in the ''Final Determination'' section below.

Preliminary Antidumping Duty (AD) and Countervailing Duty (CVD) Determinations,'' dated December 18, 2018 (Preliminary Scope Decision Memorandum).

Final Determination

Commerce determines that the following weighted-average dumping margins exist for the period April 1, 2017 through March 31, 2018:

Exporter/producer	Weighted-average margins (percent)
Sahamitr Pressure Container Public Company Limited	10.77
All Others	10.77

Disclosure

We will disclose the calculations performed within five days of public announcement of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of all appropriate entries of steel propane cylinders from Thailand, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after December 27, 2018, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. 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, or sales (or the likelihood of sales) for importation of steel propane cylinders from Thailand 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, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an 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 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 violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: June 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is steel cylinders for compressed or liquefied propane or other gases (steel propane cylinders) meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specifications 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or United Nations pressure receptacle standard ISO 4706 and otherwise meeting the description provided below. The scope includes steel propane cylinders regardless of whether they have been certified to these specifications before importation. Steel propane cylinders range from 2.5 pound nominal gas capacity (approximate 6 pound water capacity and approximate 4–6 pound tare weight) to 42 pound nominal gas capacity (approximate 100 pound water capacity and approximate 28–32 pound tare weight). Steel propane cylinders have two or fewer ports and may be imported assembled or unassembled (*i.e.,* welded or brazed before or after importation), with or without all components (including collars, valves, gauges, tanks, foot rings, and overfill prevention devices), and coated or uncoated. Also included within the scope are drawn cylinder halves, unfinished propane cylinders, collars, and foot rings for steel propane cylinders.

An ''unfinished'' or ''unassembled'' propane cylinder includes drawn cylinder halves that have not been welded into a cylinder, cylinders that have not had flanges welded into the port hole(s), cylinders that are otherwise complete but have not had collars or foot rings welded to them, otherwise complete cylinders without a valve assembly attached, and cylinders that are otherwise complete except for testing, certification, and/or marking.

This investigation also covers steel propane cylinders that meet, are produced to meet, or are certified as meeting, other U.S. or Canadian government, international, or industry standards (including, for example, American Society of Mechanical Engineers (ASME), or American National Standard Institute (ANSI)), if they also meet, are produced to meet, or are certified as meeting USDOT Specification 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or a United Nations pressure receptacle standard ISO 4706.

Subject merchandise also includes steel propane cylinders that have been further processed in a third country, including but not limited to, attachment of collars, foot rings, or handles by welding or brazing, heat treatment, painting, testing, certification, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope steel propane cylinders.

Specifically excluded are seamless steel propane cylinders and propane cylinders made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight), aluminum, or composite fiber material. Composite fiber material is material consisting of the mechanical combination of two components: Fiber (typically glass, carbon, or aramid (synthetic polymer)) and a matrix material (typically polymer resin, ceramic, or metallic).

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers 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

[FR Doc. 2019–13253 Filed 6–20–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–883, A–588–878]

Glycine From India and Japan: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing antidumping duty orders on glycine from India and Japan. In addition, Commerce is amending its final affirmative determination on glycine from India.

DATES: Applicable June 21, 2019.

FOR FURTHER INFORMATION CONTACT: Edythe Artman at (202) 482–3931 or Kent Boydston at (202) 482–5649 (India), or John McGowan at (202) 482–3019 (Japan), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), Commerce published its affirmative final determinations in the less-than-fair-value investigations of glycine from India and Japan on May 1, 2019.[1] On June 14, 2019, the ITC notified Commerce of its final affirmative determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the less-than-fair-value imports of glycine from India and Japan.[2]

Scope of the Orders

The merchandise covered by these orders is glycine from India and Japan. For a complete description of the scope of the orders, *see* the Appendix to this notice.

Amendment to Final Determination

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.[3]

Pursuant to sections 735(e) of the Act and 19 CFR 351.224(e) and (f), Commerce is amending the *India Final Determination* to reflect the correction of two ministerial errors in the final estimated weighted-average dumping margin calculated for Kumar Industries, India (Kumar). In addition, because Kumar's estimated weighted-average dumping margin is the basis for the estimated weighted-average dumping margin determined for all other Indian producers and exporters of subject merchandise, we also are revising the ''all-others'' rate in the *India Final*

[1] *See Glycine from India: Final Determination of Sales at Less Than Fair Value,* 84 FR 18487 (May 1, 2019) (*India Final Determination*); *see also Glycine from Japan: Final Determination of Sales at Less Than Fair Value,* 84 FR 18484 (May 1, 2019).

[2] *See* section 735(d) of the Act (requiring notification); *see also* ITC Letter dated June 14, 2019 (ITC Letter).

[3] *See* section 735(e) of the Act and 19 CFR 351.224(f).

Determination.[4] The amended estimated weighted-average dumping margins are listed in the Suspension of Liquidation section below.

Antidumping Duty Orders

On June 14, 2019, in accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured by reason of imports of glycine from India and Japan.[5] Therefore, in accordance with sections 735(c)(2) and 736 of the Act, we are issuing these antidumping duty orders. Because the ITC determined that imports of glycine from India and Japan are materially injuring a U.S. industry, unliquidated entries of such merchandise from India and Japan, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

As a result of the ITC's final affirmative determinations, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise, for all relevant entries of glycine from India and Japan. In the case of entries from India, the antidumping duties will be adjusted for export subsidies found in the final determination of the companion countervailing duty investigation.[6] Antidumping duties will be assessed on unliquidated entries of glycine from India and Japan entered, or withdrawn from warehouse, for consumption on or after October 31, 2018, the date of publication of the *Preliminary Determinations,*[7] but will not include entries occurring after the expiration of the provisional measures period and before publication in the **Federal Register** of the ITC's injury determination, as further described below.

Suspension of Liquidation

In accordance with section 736 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of subject merchandise (*i.e.,* glycine from India and Japan), effective the date of publication of the ITC final determination in the **Federal Register,** and to assess, upon further instruction by Commerce pursuant to section 736(a)(1) of the Act, antidumping duties for each entry of the subject merchandise equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise, adjusted by the amount of export subsidies, where appropriate. We intend to instruct CBP to require, at the same time as importers would normally deposit estimated import duties on this merchandise, cash deposits for each entry of subject merchandise equal to the rates noted below. These instructions suspending liquidation will remain in effect until further notice. The all-others rates apply to all other producers or exporters not specifically listed.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins for each antidumping duty order are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
India		
Kumar Industries, India	13.61	6.62
Paras Intermediates Private Limited	10.86	[8] 7.83
All Others	12.24	[9] 7.23
Japan		
Yuki Gosei Kogyo Co., Ltd	53.66	NA
Showa Denko K.K	86.22	NA
All Others	53.66	NA

NA = Not Applicable.

Provisional Measures

Section 733(d) of the Act [8] [9] states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than six months. Commerce published its affirmative *Preliminary Determinations* on October 31, 2018. Therefore, the six-month period beginning on the date of publication of the *Preliminary Determinations* ended on April 28, 2019. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rates listed above will begin on the date of publication of the ITC's final injury determination in the **Federal Register.**

Therefore, in accordance with section 733(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of glycine from India and Japan entered, or withdrawn from warehouse, for consumption after April 28, 2019, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register.** Suspension of liquidation will resume on the date of publication of the ITC's final affirmative injury determinations in the **Federal Register.**

Notification to Interested Parties

This notice constitutes the antidumping duty orders with respect to glycine from India and Japan pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping

[4] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Glycine from India: Allegations of Ministerial Errors in the Final Determination,'' dated May 29, 2019 (Ministerial Error Memorandum).

[5] *See* ITC Letter.

[6] *See India Final Determination,* 84 FR at 18488.

[7] *See Glycine from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 83 FR 54713 (October 31, 2018); *Glycine from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 83 FR 54718 (October 31, 2018) (collectively, *Preliminary Determinations*).

[8] *See India Final Determination,* 84 FR at 18488.

[9] *Id.; see* Ministerial Error Memorandum at 4.

duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with section and 736(a) of the Act and 19 CFR 351.211(b).

Dated: June 18, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by these orders is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56–40–6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

[FR Doc. 2019–13362 Filed 6–20–19; 8:45 am]

BILLING CODE 3510–DS–P

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; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding, in part, the administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (Vietnam) for the period February 1, 2018, through January 31, 2019.

DATES: Applicable June 21, 2019.

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 May 2, 2019, based on timely requests for review for 107 companies by the Ad Hoc Shrimp Trade Action Committee (the petitioner),[1] 185 companies by the American Shrimp Processors Association (ASPA),[2] and 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, 2018, through January 31, 2019.[4]

On May 31, 2019, Commerce published in the **Federal Register** a notice of rescission, in part, wherein Commerce rescinded the administrative review for 40 companies, based on timely-filed withdrawals of review requests from the petitioner, ASPA, and certain Vietnamese companies.[5]

On May 30, 2019, and May 31, 2019, the petitioner and ASPA withdrew their respective review requests, in part, for an additional five Vietnamese exporters initiated for review.[6] On May 30, 2019, Quoc Viet Seaproducts Processing Trade and Import-Export Co., Ltd. withdrew its review requests.[7] On May 31, 2019, Soc Trang Seafood Joint Stock Company withdrew its review request.[8] On June 6, 2019, the petitioner and ASPA withdrew their respective review requests for an additional three companies.[9]

All interested parties that withdrew their requests for review of companies also included those companies' name variations, as listed in the *Initiation Notice* and the attached Appendix. All review requests for the company names listed in the Appendix have been withdrawn; no other party requested a review of these exporters.

Two additional companies withdrew their review requests on May 30, 2019.[10] However, because the petitioner and ASPA did not withdraw their respective review requests for these two companies, the two companies remain under active review.

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 the petitioner, ASPA, and the individual companies all withdrew their requests for administrative review 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 the companies identified in the Appendix, in accordance with 19 CFR 351.213(d)(1).

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, 2018, through January 31,

[1] *See* the Petitioner's Request for Administrative Review, dated February 27, 2019.

[2] *See* ASPA's Request for Administrative Review, dated February 27, 2019.

[3] *See, e.g.,* VASEP's submission, ''Request for Administrative Review (02/01/18–01/31/19),'' dated February 26, 2019; Soc Trang Seafood Seafood Joint Stock Company's ''Request for Review,'' dated February 11, 2019.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777 (May 2, 2019) (*Initiation Notice*).

[5] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Review; 2018–2019,* 84 FR 25238 (May 31, 2019).

[6] *See* the Petitioner's Submission, ''Domestic Producers' Partial Withdrawal of Review Requests,'' dated May 30, 2019; ASPA's Submissions, ''Partial Withdrawal of Review Requests,'' and ''Corrections to Partial Withdrawal of Review Requests,'' both dated May 31, 2019. Of these five companies, only two of them had also requested an administrative review; thus, three of these companies had only been requested for review by the petitioner and ASPA (Bien Dong Seafood Co., Ltd.; NGO BROS Seaproducts Import-Export One Member Company Limited; and Seavina Joint Stock Company).

[7] *See* Quoc Viet Seaproducts Processing Trade and Import-Export Co., Ltd. Submission, ''Withdrawal of Review Request,'' dated May 30, 2019.

[8] *See* Soc Trang Seafood Joint Stock Company Submission, ''Withdrawal of Request for Administrative Review,'' dated May 31, 2019.

[9] *See* the Petitioner's Submission, ''Domestic Producers' Partial Withdrawal of Review Requests,'' dated June 6, 2019; *see also* ASPA's Submission, ''Partial Withdrawal of Review Requests,'' dated June 6, 2019. All three companies withdrawn had only been requested for review by the petitioner and ASPA; thus, no other review requests remain on the record for Au Vung One Seafood Processing Import & Export Joint Stock Company, Au Vung Two Seafood Processing Import & Export Joint Stock Company, and Thanh Doan Sea Products Import & Export Processing Joint Stock Company.

[10] *See* Cadovimex Seafood Import-Export & Processing Joint-Stock Company and Trong Nhan Seafood Company Limited's Submission, ''Withdrawal of Entry of Appearance and Review Request,'' dated May 30, 2019.

2019, 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**, if appropriate.

Notifications

This notice 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 the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a 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: June 18, 2019.

James Maeder,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

Companies Rescinded From Review

1. —Au Vung One Seafood Processing Import & Export Joint Stock Company
2. —Au Vung Two Seafood Processing Import & Export Joint Stock Company
3. —Bien Dong Seafood Co., Ltd
4. —NGO BROS Seaproducts Import-Export One Member Company Limited (''NGO BROS Company'')
   —Ngo Bros Seaproducts Import-Export One Member Company Limited (''Ngo Bros. Co., Ltd.'')
   —Ngo Bros Seaproducts Import-Export One Member Company Limited (Ngo Bros)
   —NGO BROS Seaproducts Import-Export One Member Company Limited (NGO BROS)
5. —Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd.
   —Quoc Viet Seaproducts Processing Trade and Import-Export Co., Ltd. (Quoc Viet Co., Ltd.)
   —Quoc Viet Seaproducts Processing Trade and Import-Export Co., Ltd. (''Quoc Viet Co. Ltd.'')
6. —Seavina Joint Stock Co
   —Seavina Joint Stock Company
7. —Soc Trang Seafood Joint Stock Company (STAPIMEX)
   —Soc Trang Seafood Joint Stock Company (''STAPIMEX'')
8. —Thanh Doan Sea Products Import & Export Processing Joint Stock Company Thadimexco
   —Thanh Doan Sea Products Import & Export Processing Joint-Stock Company (THADIMEXCO)

[FR Doc. 2019–13251 Filed 6–20–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–884; C–570–081]

Glycine From India and the People's Republic of China: Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (the ITC), Commerce is issuing countervailing duty orders on glycine from India and the People's Republic of China (China).

DATES: Applicable June 21, 2019.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann at (202) 482–0698 or Julie Geiger at (202) 482–2057 (India), or Tyler Weinhold at (202) 482–1121 (China), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), Commerce published its affirmative final determinations in the countervailing duty investigations of glycine from India and China on May 1, 2019.[1] On June 14, 2019, the ITC notified Commerce of its final affirmative determinations that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act, by reason of subsidized imports of glycine from India and China.[2]

Scope of the Orders

The merchandise covered by these orders is glycine from India and China. For a complete description of the scope of the orders, *see* the Appendix to this notice.

Countervailing Duty Orders

On June 14, 2019, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured by reason of imports of glycine from India and China.[3] Therefore, in accordance with sections 705(c)(2) and 706 of the Act, we are issuing these countervailing duty orders. Because the ITC determined that imports of glycine from India and China are materially injuring a U.S. industry, unliquidated entries of such merchandise from India and China, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

As a result of the ITC's final affirmative determinations, in accordance with section 706(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties on unliquidated entries of glycine from India and China. Countervailing duties will be assessed on unliquidated entries of glycine from India and China entered, or withdrawn from warehouse, for consumption on or after September 4, 2018, the date of publication of the *Preliminary Determinations,*[4] but will not include entries occurring after the expiration of the provisional measures period and before publication in the **Federal Register** of the ITC's injury determination, as further described below.

Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of subject merchandise (*i.e.,* glycine from India and China), effective on the date of publication of the ITC's final

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[1] *See Countervailing Duty Investigation of Glycine from India: Affirmative Final Determination,* 84 FR 18482 (May 1, 2019); *see also Glycine from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 84 FR 18489 (May 1, 2019).

[2] *See* ITC Letter, dated June 14, 2019 (ITC Letter).

[3] *See* ITC Letter.

[4] *See Glycine from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 44859 (September 4, 2018); *see also Glycine from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 83 FR 44863 (September 4, 2018) (collectively, *Preliminary Determinations*).

determination in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. We intend to instruct CBP to require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for each entry of subject merchandise equal to the rates noted below. These instructions suspending liquidation will remain in effect until further notice. The all-others rates apply to all producers or exporters not specifically listed.

Estimated Subsidy Rates

The estimated subsidy rates for each countervailing duty order are as follows:

Exporter/producer	Subsidy rate (percent)
India	
Kumar Industries, India	6.99
Paras Intermediates Private Limited	3.03
All Others	5.01
China	
JC Chemicals Limited	144.01
Sigmachem Corp	144.01
All Others	144.01

Provisional Measures

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published its affirmative *Preliminary Determinations* on September 4, 2018. Therefore, the four-month period beginning on the date of the publication of the *Preliminary Determinations* ended on January 1, 2019. Pursuant to section 707(b) of the Act, the collection of cash deposits at the rates listed above will begin on the date of publication of the ITC's final injury determination in the **Federal Register**.

Therefore, in accordance with section 703(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of glycine from India and China entered, or withdrawn from warehouse, for consumption after January 1, 2019, the date on which provisional measures expired, through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**.

Notifications to Interested Parties

This notice constitutes the countervailing duty orders with respect to glycine from India and China pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with sections 705(c) and 706(a) of the Act and 19 CFR 351.211(b).

Dated: June 18, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by these orders is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56–40–6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

[FR Doc. 2019–13361 Filed 6–20–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW001

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Coastal Pelagic Species Fishery; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Regional Administrator, West Coast Region, NMFS, has made a preliminary determination that an application for an Exempted Fishing Permit warrants further consideration. The application, submitted by the California Wetfish Producers Association, requests an exemption from the expected prohibition of primary directed fishing for Pacific sardine for the 2019–2020 fishing year to collect Pacific sardine as part of an industry-based scientific survey. NMFS requests public comment on the application.

DATES: Comments must be received by July 8, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0057, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0057,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments. The EFP application will be available under Relevant Documents through the same link.
- *Mail:* Submit written comments to Lynn Massey, West Coast Region, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802–4250.
- *Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are a 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.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Lynn Massey, West Coast Region, NMFS, (562) 436–2462, *lynn.massey@noaa.gov.*

SUPPLEMENTARY INFORMATION: On May 28, 2019, NMFS published a proposed rule (84 FR 24459) to implement Pacific sardine harvest specifications for the

2019–2020 fishing year off the U.S. West Coast, which begins on July 1. This proposed rule included a 4,514 metric ton (mt) annual catch limit (ACL) and a prohibition on directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California (except for small directed catch and catch of live bait). At the April 2019 Pacific Fishery Management Council (Council) meeting, the Council voted in support of the California Wetfish Producer Association's (CWPA) exempted fishing permit (EFP) application as well as one other application that NMFS is evaluating separately, which both requested an exemption from the prohibition on directed fishing for Pacific sardine. The Council therefore structured the 2019–2020 Pacific sardine harvest specifications so that up to 405 mt (the combined total of the anticipated harvests under the two EFP proposals the Council reviewed) of the ACL could be harvested under EFPs. The CWPA requested to directly harvest up to 400 mt of Pacific sardine for its Coastal Pelagic Species Near-shore Cooperative Survey (CPS–NCS).

Since 2012 the California Department of Fish and Wildlife, in partnership with the CWPA, has been conducting aerial surveys to estimate the biomass and distribution of sardine and certain other CPS species in nearshore waters in the Southern California Bight, and in the Monterey-San Francisco area since the summer of 2017. Currently, there is uncertainty in the biomass estimates from aerial spotter pilots. The CPS–NCS survey associated with the proposed EFP is part of research to quantify that level of uncertainty by capturing CPS schools identified by aerial spotter pilots and validating the biomass and species composition of the schools. A portion of each point set (*i.e.,* an individual haul of fish captured with a purse seine net) will be retained for biological sampling, and the remainder will be sold by the participating fishermen and processors to offset research costs and avoid unnecessary discard. This research contributes to broader efforts to understand CPS biomass in shallow, nearshore areas that NOAA's CPS offshore acoustic trawl survey is unable to access.

If NMFS issues this EFP, the CPS–NCS will survey nearshore waters of the Southern California Bight for 7–10 days between July 1, 2019 and June 30, 2020. Any harvest under this EFP would count against the ACL for Pacific sardine. If NMFS does not issue this EFP, then this 400 mt-portion of the ACL would be available for harvest by other permissible fishing activities.

Authority: 16 U.S.C. 1801 *et seq.*

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–13214 Filed 6–20–19; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* July 21, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 3/1/2019 and 5/17/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSN—Product Name: 6550–00–NIB–0023—Test Cup, Drug Detection, Round, 2–7/8″ D x 3–1/2″ H, 13-card dipcard
Mandatory Source of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

MR 1086—Mop, Spritz and Go
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Military Resale-Defense Commissary Agency

Deletions

On 5/17/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN—Product Name: 7920–01–626–8205—Sponge, All-Purpose, Nylon Mesh, 7 1/2″ x 4 1/4″ x 1 3/4″
Mandatory Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

7045–01–086–2044—Tape, Electronic Data Processing
Mandatory Source of Supply: North Central Sight Services, Inc., Williamsport, PA
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

7510–01–625–0850—Toner Cartridge, Laser, Extra High Yield, Lexmark E260 Series
Mandatory Source of Supply: Alabama Industries for the Blind, Talladega, AL

7530–01–600–2023—Notebook, Spiral Bound, Biobased Bagasse Paper, 6x9–1/2″, 150 sheets, College Rule, White
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2), NEW YORK, NY

7360–00–177–4958—Dining Packet (Dietetic)
7360–00–177–4959—Dining Packet (Dietetic)
7360–00–177–4960—Dining Packet (Dietetic)
7360–00–177–4961—Dining Packet (Dietetic)
7360–00–177–4962—Dining Packet (Dietetic)
7360–00–177–4963—Dining Packet (Dietetic)
7360–00–935–6408—Dining Packet
7360–00–935–6409—Dining Packet
7360–00–935–6410—Dining Packet
7360–00–935–6411—Dining Packet
7360–00–935–6412—Dining Packet
7360–00–935–6413—Dining Packet
7360–00–935–6416—Dining Packet (Dietetic)
7360–00–935–6417—Dining Packet (Dietetic)
7360–00–935–6420—Dining Packet (Dietetic)
7360–00–935–6421—Dining Packet (Dietetic)
Mandatory Source of Supply: Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Services

Service Type: Janitorial/Custodial
Mandatory for: US Army, 1LT John S. Turner USARC, Fairfield, CT
Mandatory Source of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–PICA

Service Type: Grounds Maintenance
Mandatory for: U.S. Army Reserve Center: 50 East Street, Springfield, MA
Mandatory Source of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Janitorial Service
Mandatory for: Norman Military Complex (excluding Norman Armed Force Reserve Center), Norman, OK
Mandatory Source of Supply: Dale Rogers Training Center, Inc., Oklahoma City, OK
Contracting Activity: DEPT OF THE ARMY, W7NV USPFO ACTIVITY OK ARNG

Service Type: Janitorial/Grounds Maintenance
Mandatory for: West Hill Dam, Uxbridge, MA
Mandatory Source of Supply: UNKNOWN
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Janitorial/Custodial
Mandatory for: Austin AFRC #1, 4601 Fairview Drive, Austin, TX
Mandatory Source of Supply: Blue Solutions, Austin, TX
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–PRESIDIO (RC–W)

Service Type: Document Destruction
Mandatory for: Aberdeen Proving Ground: Building 314, Northeast Civilian Personnel Operation Center, Aberdeen Proving Ground, MD
Mandatory Source of Supply: The Arc Northern Chesapeake Region, Incorporated, Aberdeen, MD
Contracting Activity: DEPT OF THE ARMY, W40M RHCO–ATLANTIC USAHCA

Service Type: Pest Control
Mandatory for: Healthy Beginnings Child Development Center: 5610 Fishers Lane, Rockville, MD
Mandatory for: Parklawn Building: 5600 Fishers Lane, Rockville, MD
Mandatory Source of Supply: Davis Memorial Goodwill Industries, Washington, DC
Contracting Activity: HEALTH AND HUMAN SERVICES, DEPARTMENT OF, DEPT OF HHS

Service Type: Janitorial/Custodial
Mandatory for: Defense Logistics Agency: DNSZ Curtis Bay Depot, Baltimore, MD
Mandatory Source of Supply: The Arc Baltimore, Inc., Baltimore, MD
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA SUPPORT SERVICES—DSS

Service Type: Janitorial/Grounds Maintenance
Mandatory for: US Army Reserve Center, TSG Harold C. Lockwood USARC, Malone, NY
Mandatory Source of Supply: Citizen Advocates, Inc., Malone, NY
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–PICA

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–13202 Filed 6–20–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products and services from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* July 21, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSNs—Product Names:
8345–00–242–0266—Flag, 3 Star, Outdoor, 58″ x 81″
8345–00–242–0267—Flag, 3 Star, Outdoor, 43″ x 62″
8345–00–242–0268—Flag, 3 Star, Outdoor, 22″ x 32″
8345–00–242–0269—Flag, 3 Star, Outdoor, 12″ x 15″
8345–00–242–0270—Flag, 2 Star, Outdoor, 58″ x 81″
8345–00–242–0271—Flag, 2 Star, Outdoor, 43″ x 62″
8345–00–265–7522—Pennant
8345–01–033–9300—Flag, 2 Star, Outdoor, 52″ x 66″
8345–01–085–6033—Flag, Commandant, 52″ x 66″
8345–01–085–6034—Flag, Vice Commandant, 52″ x 66″
8345–01–087–4592—Flag, Commandant, Outdoor 43″ x 62″
8345–01–087–4593—Flag, Commandant, Outdoor, 22″ x 32″
8345–01–087–4596—Flag, Vice Commandant, Outdoor 22″ x 32″
8345–01–087–4597—Flag, Vice Commandant, Automobile, 12″ x 15″
8345–01–168–1144—Flag, 1 Star, 52″ x 66″
8345–01–168–1145—Flag, 1 Star, Outdoor, 22″ x 32″
8345–01–168–1147—Flag, 1 Star, 43″ x 62″
8345–01–248–4071—Flag, 3 Star, 52″ x 66″
8345–01–298–7403—Flag, Standard Coast Guard, 52″ x 66″
8345–00–242–0272—Flag, 2 Star, Outdoor, 22x32
8345–01–087–4594—Flag, Commandant, Automobile, 12x15
8345–01–087–4595—Flag, Vice Commandant, Outdoor, 43x62
8345–01–168–1146—Flag, 1 Star, Automobile
Mandatory Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL

Contracting Activity: SFLC PROCUREMENT BRANCH 3, BALTIMORE, MD

Services

Service Type: Data Entry
Mandatory for: USDA, Food Safety & Inspection Services: 100 North Sixth Street, Minneapolis, MN
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Document Destruction
Mandatory for: US Department of the Interior, Interior Business Center, Acquisition Services Directorate, Division III, Sierra Vista, AZ
Mandatory Source of Supply: Beacon Group, Inc., Tucson, AZ
Contracting Activity: DEPARTMENTAL OFFICES, IBC ACQ SERVICES DIVISION (00063)

Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve, Fridley USARC, Covington, VA
Mandatory Source of Supply: Goodwill Industries of the Valleys, Inc., Roanoke, VA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FT DIX (RC–E)

Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve AFRC: 3938 Old French Road, Erie, PA
Mandatory Source of Supply: Dr. Gertrude A. Barber Center, Inc., Erie, PA
Contracting Activity: DEPT OF THE ARMY, W6QM MICC CTR–FT DIX (RC)

Service Type: Janitorial/Custodial
Mandatory for: Camp Lincoln Museum, Springfield, IL
Mandatory for: Combined Support Maintenance Shop, Springfield, IL
Mandatory for: U.S. Property and Fiscal Office Warehouse: Building 2, Springfield, IL
Mandatory for: U.S. Property and Fiscal Office, Building 1, Springfield, IL
Mandatory Source of Supply: United Cerebral Palsy of the Land of Lincoln, Springfield, IL
Contracting Activity: DEPT OF THE ARMY, W7M6 USPFO ACTIVITY IL ARNG

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–13203 Filed 6–20–19; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of The Air Force

2019 Public Interface Control Working Group for the NAVSTAR GPS Public Documents

AGENCY: Department of Defense, Department of the Air Force, Global Positioning System Directorate (GPSD).

ACTION: Meeting notice.

SUMMARY: This notice informs the public that the Global Positioning Systems (GPS) Directorate will host the 2019 Public Interface Control Working Group and Open Public Forum on September 25, 2019 for the following NAVSTAR GPS public documents: IS–GPS–200 (Navigation User Interfaces), IS–GPS–705 (User Segment L5 Interfaces), IS–GPS–800 (User Segment L1C Interface), and ICD–GPS–870 (NAVSTAR GPS Control Segment to User Support Community Interfaces). Additional logistical details can be found below.

DATES: 0830–1600 PST, Wednesday, 25 September 2019.

ADDRESSES: SAIC, 100 N Sepulveda Blvd., El Segundo, CA 90245, The Great Room; Dial In: 310–653–2663 Meeting ID: 20190925 Password: 123456.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to update the public on GPS public document revisions and collect issues/comments for analysis and possible integration into future GPS public document revisions. The 2019 Public Interface Control Working Group and Open Forum are open to the general public. For those who would like to attend and participate, we request that you register no later than 18 September 2019. Please send the registration information to *SMCGPER@us.af.mil,* providing your name, organization, telephone number, email address, and country of citizenship.

Comments will be collected, catalogued, and discussed as potential inclusions to the version following the current release. If accepted, these changes will be processed through the formal directorate change process for IS–GPS–200, IS–GPS–705, IS–GPS–800, and ICD–GPS–870. All comments must be submitted in a Comments Resolution Matrix. This form along with proposed document revisions of the documents and the official meeting notice are posted at: *https://www.gps.gov/technical/icwg/meetings/2019/09/.*

Please submit comments to the SMC/GPS Requirements (SMC/GPER) mailbox at *SMCGPER@us.af.mil* by September 6, 2019. Special topics may also be considered for the Public Open Forum. If you wish to present a special topic, please submit any materials to SMC/GPER no later than August 21, 2019.

FOR FURTHER INFORMATION CONTACT: Please contact Lieutenant Benjamin Ratner at 310–653–2236 or Mr. Daniel Godwin at 310–653–3640.

Carlinda N. Lotson,

Acting Federal Register Liaison Officer.

[FR Doc. 2019–13177 Filed 6–20–19; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for a Proposed: High Voltage Electrical Transmission Line and Its Associated Infrastructure, Known as Surry-Skiffes Creek-Whealton Aerial Transmission Line "Project"

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) will prepare an Environmental Impact Statement (EIS) to evaluate project alternatives and the public interest review factors for the Project which includes 17 in-stream transmission towers and fender protection systems to support a 500kiloVolt (kV) aerial transmission line over navigable waters and placement of 27 transmission towers in non-tidal wetlands. The Project begins in Surry County near Surry Nuclear Power Plant, crosses the James River towards Skiffes Creek in James City County, and continues through Newport News, York County, and Hampton to an existing substation in Whealton. In total, the Project permanently impacts 2712 square feet (0.06 acres) of subaqueous river bottom and 281 square feet (0.006 acres) of non-tidal wetlands, and converts 0.67 acres of palustrine forested non-tidal wetlands to palustrine scrub shrub non-tidal wetlands. The Project is located within the Lower James River and Lynnhaven-Poquoson watersheds; specifically the James River, Skiffes Creek, Lee-Hall Reservoir, Harwood's Mill Reservoir, Woods Creek, Jones Run, Brick Kiln Creek, Newmarket Creek and Whiteman Swamp. Hydrologic Unit Codes 02080206 & 02080108.

DATES: A Public Scoping meeting will be held on July 17, 2019, between the hours of 5:00 p.m.–8:00 p.m.

ADDRESSES: The scoping meeting will be held at the Doubletree by Hilton Williamsburg located at 50 Kingsmill Road, Williamsburg, Virginia 23185.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the Draft Environmental Impact Statement (DEIS) can be answered by: Randy Steffey, U.S. Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, VA 23510, (757) 201–7579 or *randy.l.steffey@usace.army.mil.* More information about the project can be found at the following website: *https://www.nao.usace.army.mil/*

Missions/Regulatory/SkiffesCreekPowerLine.aspx.

SUPPLEMENTARY INFORMATION: 1. *Proposed Action:* Virginia Electric and Power Company (Dominion) has proposed an electrical transmission powerline and associated infrastructure, known as Surry-Skiffes Creek-Whealton project. The proposed project involves a 7.76-mile 500 kV overhead transmission powerline from Surry nuclear power plant to the proposed Skiffes Creek 500 kV–230 kV–115 kV switching station, on 51 acres of private and commercial property in James City County, and 20.2 miles of 230 kV overhead powerline along an existing right of way from the switching station to Whealton substation in Hampton. In July 2017, the Corps issued an Individual Permit for the Project under Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), as well as a permission letter under RHA Section 408. As part of its review process, the Corps prepared an environmental assessment (EA), which is available at the Corps' project website (*https://www.nao.usace.army.mil/Missions/Regulatory/SkiffesCreekPowerLine.aspx*). Among other conditions, the permit was issued subject to compliance with a 2017 Memorandum of Agreement (MOA) executed by the Corps; Dominion; and the Acting Assistant Secretary of the Interior for Fish, Wildlife, and Parks (on behalf of the National Park Service (NPS)), among other parties. The MOA, developed through the National Historic Preservation Act Section 106 consultation process, contained stipulations to avoid, minimize, and mitigate impacts to the historic properties in proximity to the proposed project. Dominion proceeded with construction of the project pursuant to the Corps permit and its conditions, including the conditions set forth in the MOA. The Corps permit was challenged in the U.S. District Court for the District of Columbia, which awarded summary judgment to the Corps and upheld the permit decision. That decision was appealed. In *National Parks Conservation Association* v. *Semonite*, No. 18–5179, the United States Court of Appeals for the District of Columbia Circuit remanded this action to the district court with instructions to direct the Corps to prepare an EIS pursuant to the National Environmental Policy Act (NEPA). Consistent with the court's decision, Dominion seeks authorization from the Corps for the original proposed project whose construction is approximately 99 percent complete and scheduled for completion by October 2019. On February 26, 2019, Dominion Energy electrically energized the Project.

2. *Alternatives:* Alternatives subject to consideration include, but will not be limited to:

a. No action alternative.

b. Implementation of demand-side management practices.

c. Operate all units at Yorktown using co-firing fuels (*i.e.,* natural gas and oil, but no coal).

d. Decommission Yorktown Units 1 and 2.

e. 230 kV Line #214/263 rebuild at the James River Bridge crossing.

f. Chuckatuck—Newport News 230 kV line.

g. Chickahominy—Lenexa 500 kV.

h. Save the James Alliance Alt Solution (Close Yorktown Unit 1, operate Yorktown Unit 2, construct a submarine 230 kV line across the James River, and construct future generation facilities).

i. Surry—Skiffes Underwater 230 kV single circuit line (standalone).

j. Surry—Skiffes Underwater 230 kV double circuit line (standalone).

k. 230 kV phase angle regulating transformer.

l. Surry—Skiffes Underwater 345 kV line.

m. National Trust for Historic Preservation (NHTP)/Tabors Caramanis Rudkevich (TCR) Alternative A (Enable Yorktown Unit 3 to operate continuously as a synchronous condenser, reconductor and reconfigure a number of existing transmission lines).

n. NTHP/TCR Alternative B (Use Yorktown Unit 3 only during summer peak loads).

o. NTHP/TCR Alternative C (Convert Yorktown Unit 3 to run as a continuous synchronous condenser and only use a standby generation supply under summer peak conditions upon the occurrence of a critical single-element contingency).

p. NTHP/TCR Alternative D (Tap into existing 230 kV transmission lines, build new 230 kV transmission lines, reconductor existing transmission lines, enable Yorktown Unit 3 to run as a continuous synchronous condenser, and reconfigure transmission delivery during summer peak conditions).

q. Chickahominy Generation (Utilize two natural gas plants projected in Charles City County).

r. New Generation (such as combined-cycle, combustion turbine, coal generation, biomass, wind, or solar).

s. Retrofit Yorktown Power Station.

t. 230 kV Line #214/263 Rebuild at the James River Bridge crossing with additional facilities.

u. Surry—Whealton 500 kV Line overhead.

v. Chickahominy—Skiffes Creek 500 kV line.

w. Surry—Skiffes Creek 500 kV line overhead (Dominion's Proposed Project).

x. High Tension Low Sag Conductors on the Proposed Project.

y. Surry—Skiffes Creek 500 kV underwater line (high voltage direct current).

z. Surry—Skiffes Creek 500 kV underwater line (alternating current).

aa. Surry—Fort Eustis underwater double circuit 230 kV line.

bb. Hybrid alternatives including several combinations of retrofitting, repowering, and retiring with transmission construction.

3. *Scoping Process:* The Corps has determined that the provisions of Executive Order 13807 (''One Federal Decision'') apply to this project. One Federal Decision is intended to streamline federal permitting processes, including environmental reviews and authorization decisions, for major infrastructure projects. In accordance with 40 CFR 1501 and the Council on Environmental Quality (CEQ) guidance, the Corps has identified NOAA Fisheries and the United States Fish and Wildlife Service as having authorization decision responsibilities in this action and therefore has invited them to be cooperating agencies in the preparation of the EIS. Additionally, the Corps has invited the Advisory Council on Historic Preservation, Environmental Protection Agency, Federal Aviation Administration, Federal Energy Regulatory Commission, National Park Service, and United States Coast Guard as having special expertise important in the review of this action and therefore has invited them to serve as cooperating agencies in the EIS. As the lead federal agency, the Corps will also coordinate with the public and other state and local agencies and Tribes in order to evaluate the range of actions, alternatives, direct, indirect, and cumulative impacts of the proposed project. The significant issues identified thus far include potential impacts, due to the proximity of the proposed project, to historic properties.

4. *Public Scoping Meeting:* This notice serves to inform the public that a Public Scoping meeting will be held on July 17, 2019, between 5:00 p.m.–8:00 p.m., at the Doubletree by Hilton Williamsburg located at 50 Kingsmill Road, Williamsburg, Virginia 23185. The Corps will use the comments received to assist in identifying the significant issues, which should be addressed in the DEIS. Attendance at the public meeting is not necessary to provide

comments. Written comments may also be given to the contact listed under **FOR FURTHER INFORMATION CONTACT**.

5. *DEIS Availability:* The Corps estimates that the DEIS will be available to the public for review and comment around the November 2019.

Dated: June 14, 2019.

William T. Walker,

Chief, Regulatory Branch.

[FR Doc. 2019–13229 Filed 6–20–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Solicitation of Applications for Stakeholder Representative Members of the Missouri River Recovery Implementation Committee

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Commander of the Northwestern Division of the U.S. Army Corps of Engineers (Corps) is soliciting applications to fill vacant stakeholder representative member positions on the Missouri River Recovery Implementation Committee (MRRIC). Members are sought to fill vacancies on a committee to represent various categories of interests within the Missouri River basin. The MRRIC was formed to advise the Corps on a study of the Missouri River and its tributaries and to provide guidance to the Corps with respect to the Missouri River recovery and mitigation activities currently underway. The Corps established the MRRIC as required by the U.S. Congress through the Water Resources Development Act of 2007 (WRDA), Section 5018.

DATES: The agency must receive completed applications and endorsement letters no later than July 26, 2019.

ADDRESSES: Mail completed applications and endorsement letters to U.S. Army Corps of Engineers, Kansas City District (Attn: MRRIC), 601 E 12th Street, Kansas City, MO 64106 or email completed applications to *mrric@usace.army.mil.* Please put ''MRRIC'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Lisa Rabbe, 816–389–3837.

SUPPLEMENTARY INFORMATION: The operation of the MRRIC is in the public interest and provides support to the Corps in performing its duties and responsibilities under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Sec. 601(a) of the Water Resources Development Act (WRDA) of 1986, Public Law 99–662; Sec. 334(a) of WRDA 1999, Public Law 106–53, and Sec. 5018 of WRDA 2007, Public Law 110–114. The Federal Advisory Committee Act, 5 U.S.C. App. 2, does not apply to the MRRIC.

A Charter for the MRRIC has been developed and should be reviewed prior to applying for a stakeholder representative membership position on the Committee. The Charter, operating procedures, and stakeholder application forms are available electronically at *www.MRRIC.org.*

Purpose and Scope of the Committee.

1. The primary purpose of the MRRIC is to provide guidance to the Corps and U.S. Fish and Wildlife Service with respect to the Missouri River recovery and mitigation plan currently in existence, including recommendations relating to changes to the implementation strategy from the use of adaptive management; coordination of the development of consistent policies, strategies, plans, programs, projects, activities, and priorities for the Missouri River recovery and mitigation plan. Information about the Missouri River Recovery Program is available at *www.MoRiverRecovery.org.*

2. Other duties of MRRIC include exchange of information regarding programs, projects, and activities of the agencies and entities represented on the Committee to promote the goals of the Missouri River recovery and mitigation plan; establishment of such working groups as the Committee determines to be necessary to assist in carrying out the duties of the Committee, including duties relating to public policy and scientific issues; facilitating the resolution of interagency and intergovernmental conflicts between entities represented on the Committee associated with the Missouri River recovery and mitigation plan; coordination of scientific and other research associated with the Missouri River recovery and mitigation plan; and annual preparation of a work plan and associated budget requests.

Administrative Support. To the extent authorized by law and subject to the availability of appropriations, the Corps provides funding and administrative support for the Committee.

Committee Membership. Federal agencies with programs affecting the Missouri River may be members of the MRRIC through a separate process with the Corps. States and Federally recognized Native American Indian tribes, as described in the Charter, are eligible for Committee membership through an appointment process. Interested State and Tribal government representatives should contact the Corps for information about the appointment process.

This Notice is for individuals interested in serving as a stakeholder member on the Committee. Members and alternates must be able to demonstrate that they meet the definition of ''stakeholder'' found in the Charter of the MRRIC. Applications are currently being accepted for representation in the stakeholder interest categories listed below:

a. Environmental/Conservation Org;
b. Fish & Wildlife;
c. Flood Control;
d. Irrigation;
e. Major Tributaries;
f. Water Quality;
g. Waterway Industries; and
h. At Large

Terms of stakeholder representative members of the MRRIC are three years. There is no limit to the number of terms a member may serve. Incumbent Committee members seeking reappointment do not need to re-submit an application. However, renewal requests are not guaranteed re-selection and they must submit a renewal letter and related materials as outlined in the ''Streamlined Process for Existing Members'' portion of the document *Process for Filling MRRIC Stakeholder Vacancies* (*www.MRRIC.org*).

Members and alternates of the Committee will not receive any compensation from the federal government for carrying out the duties of the MRRIC. Travel expenses incurred by members of the Committee are not currently reimbursed by the federal government.

Application for Stakeholder Membership. Persons who believe that they are or will be affected by the Missouri River recovery and mitigation activities may apply for stakeholder membership on the MRRIC. Committee members are obligated to avoid and disclose any individual ethical, legal, financial, or other conflicts of interest they may have involving MRRIC. Applicants must disclose on their application if they are directly employed by a government agency or program (the term ''government'' encompasses state, tribal, and federal agencies and/or programs).

Applications for stakeholder membership may be obtained electronically at *www.MRRIC.org.* Applications may be emailed or mailed to the location listed (see **ADDRESSES**). In order to be considered, each application must include:

1. The name of the applicant and the primary stakeholder interest category that person is qualified to represent;

2. A written statement describing the applicant's area of expertise and why the applicant believes he or she should be appointed to represent that area of expertise on the MRRIC;

3. A written statement describing how the applicant's participation as a Stakeholder Representative will fulfill the roles and responsibilities of MRRIC;

4. A written description of the applicant's past experience(s) working collaboratively with a group of individuals representing varied interests towards achieving a mutual goal, and the outcome of the effort(s);

5. A written description of the communication network that the applicant plans to use to inform his or her constituents and to gather their feedback, and

6. A written endorsement letter from an organization, local government body, or formal constituency, which demonstrates that the applicant represents an interest group(s) in the Missouri River basin.

To be considered, the application must be complete and received by the close of business on July 26 2019, at the location indicated (see **ADDRESSES**). Applications must include an endorsement letter to be considered complete. Full consideration will be given to all complete applications received by the specified due date.

Application Review Process. Committee stakeholder applications will be forwarded to the current members of the MRRIC. The MRRIC will provide membership recommendations to the Corps as described in Attachment A of the *Process for Filling MRRIC Stakeholder Vacancies* document (*www.MRRIC.org*). The Corps is responsible for appointing stakeholder members. The Corps will consider applications using the following criteria:

- Ability to commit the time required.
- Commitment to make a good faith (as defined in the Charter) effort to seek balanced solutions that address multiple interests and concerns.
- Agreement to support and adhere to the approved MRRIC Charter and Operating Procedures.
- Demonstration of a formal designation or endorsement by an organization, local government, or constituency as its preferred representative.
- Demonstration of an established communication network to keep constituents informed and efficiently seek their input when needed.
- Agreement to participate in collaboration training as a condition of membership.

All applicants will be notified in writing as to the final decision about their application.

Certification. I hereby certify that the establishment of the MRRIC is necessary and in the public interest in connection with the performance of duties imposed on the Corps by the Endangered Species Act and other statutes.

Dated: June 11, 2019.

Mark Harberg,

Program Manager for the Missouri River Recovery Program.

[FR Doc. 2019–13230 Filed 6–20–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Mental Health Service Professional Demonstration Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2019 for the Mental Health Service Professional Demonstration Grant Program, Catalog of Federal Domestic Assistance (CFDA) number 84.184X. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: June 21, 2019.

Deadline for Transmittal of Applications: August 5, 2019.

Deadline for Intergovernmental Review: September 4, 2019.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Earl Myers, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E244, Washington, DC 20202–6450. Email: *Mental.Health@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Mental Health Service Professional Demonstration Grant Program provides competitive grants to support and demonstrate innovative partnerships to train school-based mental health services providers for employment in schools and local educational agencies (LEAs). The goal of this program is to expand the pipeline of high-quality, trained providers to address the shortages of mental health service professionals in schools served by high-need LEAs. The partnerships must include (1) one or more high-need LEAs or a State educational agency (SEA) on behalf of one or more high-need LEAs; and (2) one or more eligible institutions of higher education (IHE). Partnerships must provide opportunities to place graduate students of IHEs in school-based mental health fields into schools served by the participating high-need LEAs to complete required field work, credit hours, internships, or related training as applicable for the degree, license, or credential program of each student.

Background: Our Nation's schools should be safe and secure settings where children can learn and grow to their full potential. However, over the last few years violent acts inside and outside our schools, as well as a growing rate of student suicides, have created stress and trauma for individual students and disrupted the learning environment.

School-based mental health services providers offer supports that encompass social-emotional learning, mental wellness, resilience, and positive connections between students and adults. These supports are essential to creating a school culture in which students feel safe and empowered to report safety concerns, which is proven to be among the most effective school safety strategies. Additionally, in the aftermath of a crisis, school-based mental health professionals provide supports that facilitate a return to normalcy, are sustainable, and can help to identify and work with students with more intense or ongoing needs.[1]

However, in school year 2015–16, the Department of Education's Civil Rights Data collected by the National Center for Education Statistics provided evidence

[1] "School Based Mental Health Services: Improving Student Learning and Well-Being." (2016). National Association of School Psychologists. Bethesda, MD. *www.nasponline.org/resources-and-publications/resources/mental-health/school-psychology-and-mental-health/school-based-mental-health-services.* Accessed June 12, 2019.

that there were not enough counselors, social workers, or nurses employed by our public schools. Partnerships between schools and community mental health providers (including colleges and universities), will expand the pipeline of mental health providers exposed to working in schools and should play a major role in addressing these shortages.

According to the data, 36 million students were enrolled in 55,000 schools but substantially exceeded the recommended ratios for student-to-counselor, student-to-social worker, or student-to-nurse. The actual student-to-psychologist ratio was below the recommended ratio.[2] Nationally, the ratios were as follows:

- The student-to-counselor ratio was 444:1 as compared to a recommended ratio of 250:1 by the American School Counselor Association;[3]
- The student-to-social worker ratio was 2,160:1 as compared to a recommended 250:1 by the National Association of Social Workers;[4]
- The student-to-psychologist ratio was 444-to-1 as compared to 1,000:1 generally and no more than 500 to 700:1 for broader services; by the National Association of School Psychologists;[5] and
- The student-to-nurse ratio was 936-to-1 as compared to a recommended 750-to-1 by the National Association of School Nurses.[6]

In March 2018, President Trump established a Federal Commission on School Safety (Commission) to review school climate and safety issues and make meaningful and actionable recommendations regarding best practices to keep students safe. To inform its work, the Commission held four formal meetings, four site visits, and four listening sessions. A consistent theme emphasized throughout these activities was longstanding concern over limited access to counselors and other health care-related professionals in high-poverty districts and schools where needs are the greatest.

In December 2018, the Commission released its final report,[7] which offers several recommendations for leaders at the local, State, and Federal levels on strategies and actions for improving school safety, including expanded access to mental health services. In addition, the Statement of the Managers accompanying the Department's fiscal year 2019 appropriations act encouraged the Department to use a portion of School Safety National Activities funds to support a Mental Health Demonstration Grant program.[8]

The Department is implementing the Mental Health Service Professional Demonstration Grant Program in response to these recommendations.

These grants will enable high-need LEAs or SEAs on behalf of high-need LEAs, in partnerships with one or more participating eligible IHEs, to expand the pipeline of school-based mental health services providers, as defined in this notice, for high-need public elementary schools and secondary schools with shortages of school-based mental health service providers. The provision of medical services by such professionals is not an allowable use of funds under this grant. To the extent that grant funds directly benefits an individual graduate student, the Department encourages an applicant to consider how it might implement a service obligation for such graduate student as a school-based mental health services provider in a high-need school commensurate with the level of support the graduate student receives.

Priorities: This notice contains one absolute priority and two competitive preference priorities. We are establishing the absolute priority for the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priorities are from the Department's notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities), published in the **Federal Register** on March 2, 2018 (83 FR 9096).

Absolute Priority: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Expand the capacity of high-need LEAs in partnership with IHEs to train school-based mental health services providers, as defined in this notice, with the goal of expanding the pipeline of these professionals into high-need public elementary schools and secondary schools in order to address the shortages of school-based mental health service providers in such schools.

To meet this priority, the applicant must propose a School-Based Mental Health partnership (as defined in this notice) established for the purpose of placing graduate students of university academic programs in school-based mental health fields into schools served by the participating high-need LEAs to complete required field work, credit hours, internships, or related training as applicable for the degree, license, or credential program of each student.

Competitive Preference Priorities: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional five points to an application, depending on how well the application meets Competitive Preference Priority 1; and up to an additional five points to an application that meets Competitive Preference Priority 2. Applicants may address one or both of the competitive preference priorities. The total maximum points we may award an application that chooses to address each of the competitive preference priorities is 10. An applicant must clearly indicate in the abstract section of its application each competitive preference priority under which it is applying. The Department may choose not to award points under these competitive preference priorities for any application that fails to do so.

These priorities are:

Competitive Preference Priority 1—Fostering Knowledge and Promoting the Development of Skills That Prepare Students To Be Informed, Thoughtful, and Productive Individuals and Citizens. (0 to 5 points)

Supporting projects likely to improve student academic performance and better prepare students for employment, responsible citizenship, and fulfilling

[2] Civil Rights Data Collection. U.S. Department of Education. *https://ocrdata.ed.gov/.* Accessed June 12, 2019.

[3] American School Counselor Association Home Page. *https://www.schoolcounselor.org/.* Accessed June 12, 2019.

[4] "NASW Highlights the Growing Need for School Social Workers to Prevent School Violence." National Association of Social Workers. March 27, 2018. *https://www.socialworkers.org/News/News-Releases/ArticleType/ArticleView/ArticleID/1633.* Accessed June 12, 2019.

[5] "Shortages in School Psychology." National Association of School Psychologists. *https://www.nasponline.org/Documents/Resources%20and%20publications/Resources/School_Psychology_Shortage_2017.pdf.* Accessed June 12, 2019.

[6] "School Nurse Workload: Staffing for Safe Care." National Association of School Nurses. *https://www.nasn.org/advocacy/professional-practice-documents/position-statements/ps-workload.* Accessed June 12, 2019.

[7] DeVos, B., et al. *Final Report of the Federal Commission on School Safety.* (2018). *https://www2.ed.gov/documents/school-safety/school-safety-report.pdf.*

[8] Conference Report for the Department of Defense for the Fiscal Year Ending September 30, 2019, and for Other Purposes. *https://www.congress.gov/115/crpt/hrpt952/CRPT-115hrpt952.pdf* (Page 543).

lives, including by preparing children or students to do one or more of the following:

(i) Develop positive personal relationships with others.

(ii) Develop determination, perseverance, and the ability to overcome obstacles.

(iii) Develop self-esteem through perseverance and earned success.

(iv) Develop problem solving skills.

(v) Develop self-regulation in order to work toward long-term goals.

Competitive Preference Priority 2—Protecting Freedom of Speech and Encouraging Respectful Interactions in a Safe Educational Environment. (0 to 5 points)

Developing positive learning environments that promote strong relationships among students and school personnel to help prevent bullying, violence, and disruptive actions that diminish the opportunity for each student to receive a high-quality education.

Requirements: We are establishing these application requirements for the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

Application Requirements: An applicant must include the following in its application:

(a) *Description of the severity and magnitude of the problem and identification of schools to be served by the proposed project.*

Applicants must describe how the lack of school-based mental health services providers is specifically affecting students in schools to be served by project activities. Applicants must describe the nature of the problem for the LEA, based on information such as, but not limited to, the most recent available ratios of school-based mental health service providers to students enrolled in schools in each high-need LEA that is part of the School-Based Mental Health partnership (in the aggregate and disaggregated by profession (*e.g.,* social workers, school psychologists)). The description may also include LEA and school-level demographic data, school climate surveys, school violence/crime data and data related to suicide rates. In order to help the Department assess the magnitude of the problem and ensure the applications selected will serve high-need LEAs, data cited must be compared to similar data at the State or local level, and on a per capita basis when available.

(b) *Collaboration and coordination with related Federal, State, and local initiatives.*

Applicants must describe how they intend to collaborate with State, regional, and local chapters of social workers, psychologists, and nurses associations, and describe their relationship and coordination with regional and local mental health, public health, child welfare, and other community agencies, to achieve project goals and objectives of establishing a pipeline program to train and expand the capacity of school-based mental health service providers in high-need LEAs. Applicants must also describe proposed coordination with existing federally funded efforts related to elementary and secondary school counseling and mental health promotion. Evidence of collaboration and coordination must be provided through letters of support or Memoranda of Agreement/Memoranda of Understanding (MOAs/MOUs) from State, regional, or local chapters or agencies, if applicable. Applicants must describe how they will use the Mental Health Service Professional Demonstration Grant Program funds to complement, rather than duplicate, existing, ongoing, or new efforts to expand the pipeline of school-based mental health services providers to be employed by schools and local educational agencies (LEAs) qualified to provide school-based mental health services. Finally, applicants must include estimates of the number of mental health service providers they expect to train and have placed into employment by high-need schools and high-need LEAs each year.

(c) *Enhancing LEA capacity to provide mental health services to students.*

Applicants must describe the specific activities they will conduct to expand and improve LEA capacity to serve students in high-need LEAs and ensure that students receive appropriate mental health services. To meet this requirement, the applicant must propose a School-Based Mental Health partnership (as defined in this notice) established for the purpose of placing graduate students of university academic programs in school-based mental health fields into schools served by the participating high-need LEAs to complete required field work, credit hours, internships, or related training as applicable for the degree, license, or credential program of each student. If the applicant intends to establish a program that directly benefits an individual graduate student, such as through a stipend or tuition credit, the Department encourages the applicant to describe its approach, if any, to implementing a service obligation for such graduate student as a school-based mental health services provider in a high-need school commensurate with the level of support the graduate student receives.

(d) *Enhancing LEAs ability to assess and address the needs of students in high-need LEAs.*

Applicants must describe the specific process and activities they will use to ensure students in high-need who may be in need of school-based mental health services, are properly targeted, assessed, and provided the appropriate school-based mental health service.

Definitions: We are establishing the definitions of ''eligible institution of higher education,'' ''high-need school,'' ''School-Based Mental Health partnership,'' and ''student from a low-income family,'' in this notice for the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1). The definition of ''high-need LEA'' is from section 200 of the Higher Education Act of 1965, as amended (20 U.S.C. 1021(10)). The definition of ''local educational agency'' is from 20 U.S.C. 7801(30) and is included for the convenience of the reader. The definition of ''institution of higher education'' is from 20 U.S.C. 1002. The definition of ''State educational agency'' is from 20 U.S.C. 7801. The definitions of ''ambitious'' and ''baseline'' are from 34 CFR 77.1. The definition of ''school-based mental health services provider'' is from 20 U.S.C. 7112(6).

These definitions are:

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure.

Baseline means the starting point from which performance is measured and targets are set.

Eligible institution of higher education means an institution of higher education that offers a program of study that leads to a masters or other graduate degree—

(a) In school psychology that prepares students in such program for the State licensing or certification examination in school-based psychology;

(b) In school counseling that prepares students in such program for the State licensing or certification examination in school counseling;

(c) In school social work that prepares students in such program for the State licensing or certification examination in school social work;

(d) In another school-based mental health field that prepares students in such program for the State licensing or certification examination in such fields as behavioral health aides, school nurses, and clinical psychologists employed by the schools or under contract with LEAs to provide evaluations, if applicable; or

(e) In any combination of study described in subparagraphs (a) through (d).

High-need local educational agency (LEA) means an LEA—

(a)(1) For which not less than 20 percent of the children served by the agency are children from low-income families;

(2) That serves not fewer than 10,000 children from low-income families;

(3) That meets the eligibility requirements for funding under the Small, Rural School Achievement (SRSA) program under section 5211(b) of the ESEA (20 U.S.C. 7345(b)); or

(4) That meets eligibility requirements for funding under the Rural and Low-Income School (RLIS) program under section 5221(b) of the ESEA (20 U.S.C. 7351(b)); and—

(b)(1) For which there is a high percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach; or

(2) For which there is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licensure.

High-need school means a school that, based on the most recent data available, meets one or both of the following:

(a) The school is in the highest quartile of schools in a ranking of all schools served by a local educational agency, ranked in descending order by percentage of students from low-income families enrolled in such schools, as determined by the local educational agency based on one of the following measures of poverty:

(1) The percentage of students aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary.

(2) The percentage of students eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act.

(3) The percentage of students in families receiving assistance under the State program funded under part A of title IV of the Social Security Act.

(4) The percentage of students eligible to receive medical assistance under the Medicaid program.

(5) A composite of two or more of the measures described in subclauses (I) through (IV).

(b) In the case of—

(1) an elementary school, the school serves students not less than 60 percent of whom are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act; or

(2) any other school that is not an elementary school, the other school serves students not less than 45 percent of whom are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act.

Institution of higher education has the meaning given to such term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002), but excludes any institution of higher education described in section 102(a)(1)(C) of such Act.

Local educational agency means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Education.

(d) The term includes educational service agencies and consortia of those agencies.

(e) The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

School-Based Mental Health partnership means:

(a) One or more high-need LEAs or a State educational agency (SEA) on behalf of one or more high-need LEAs; and

(b) one or more eligible IHEs.

School-based mental health services provider means a State-licensed or State-certified school counselor, school psychologist, school social worker, or other State licensed or certified mental health professional qualified under State law to provide mental health services to children and adolescents.

State educational agency has the meaning given the term in section 8101 of the ESEA (20 U.S.C. 7801).

Student from a low-income family means any student whose family meets any of the poverty thresholds established in ESEA section 1113 for the relevant grade level.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, and requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under title IV, part F, subpart 3 of the ESEA (20 U.S.C. 7281) and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, definitions, and requirements under section 437(d)(1) of GEPA. These priorities, definitions, and requirements will apply to the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: Section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost

Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $15,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from the competition.

Estimated Range of Awards: $250,000 to $500,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* High-need LEAs; SEAs on behalf of one or more high-need LEA(s). Applicants must propose to work in partnership with an eligible IHE.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Limitation on Awards:* The Department will make only one award that serves any individual LEA.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program. Please note that, under 34 CFR 79.8(a), we have shortened the standard 60-day intergovernmental review period in order to make awards by the end of FY 2019.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice. In addition, we remind applicants that section 4001(b) of the ESEA (20 U.S.C. 7101) prohibits the use of funds for medical services or drug treatment or rehabilitation, except for integrated student supports, specialized instructional support services, or referral to treatment for impacted students, which may include students who are victims of, or witnesses to, crime or who illegally use drugs. This prohibition does not preclude the use of funds to support mental health counseling and support services, including those provided by a mental health services provider outside of school, so long as such services are not medical.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. The maximum score for all selection criteria is 100 points. The points assigned to each criterion are indicated in parentheses. Non-Federal peer reviewers will evaluate and score each application program narrative against the following selection criteria:

(a) *Need for the Project* (15 points)

(1) The Secretary considers the proposed need for the project.

(2) In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance* (15 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(c) *Quality of the Project Design* (20 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives. (15 points)

(ii) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (5 points)

(d) *Quality of the Project Services* (30 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(e) *Quality of the Project Evaluation* (20 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (10 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200 subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 performance measures for the Mental Health Service Professional Demonstration Grant Program:

(a) The unduplicated number of school-based mental health services providers employed by schools and LEAs as of the date for each annual reporting period of the grant who have been trained and placed by the grant to provide school-based mental health services.

(b) Number of school-based mental health services providers employed by schools and LEAs retained on an annual basis by a high-need local educational agency to provide school-based mental health services.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures. This data will be considered by the Department in making potential continuation awards.

Consistent with 34 CFR 75.591, grantees funded under this program shall requirements of any evaluation of the program conducted by the Department or an evaluator selected by the Department.

Performance measure targets: The applicant must propose annual targets for the measures listed above in their application. Applications must also provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) Why each proposed performance target is ambitious (as defined in this notice) yet achievable compared to the baseline for the performance measure.

(2)(a) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (b) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If the applicant does not have experience with collection and reporting of performance data through other projects or research, the applicant should provide other evidence of capacity to successfully carry out data collection and reporting for its proposed project.

The reviewers of each application will score related selection criteria on the basis of how well an applicant has considered these measures in conceptualizing the approach and evaluation of the project.

All grantees must submit an annual performance report and final performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 18, 2019.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–13289 Filed 6–20–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case Number 2018–007; EERE–2018–BT–WAV–0011]

Energy Conservation Program: Decision and Order Granting a Waiver to Beghelli From the Department of Energy Illuminated Exit Sign Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of decision and order.

SUMMARY: The U.S. Department of Energy (''DOE'') gives notice of a Decision and Order (Case Number 2018–007) that grants to Beghelli North America (''Beghelli'') a waiver from specified portions of the DOE test procedure for determining the energy consumption of specified basic models of illuminated exit signs. Beghelli is required to test and rate the specified basic models in accordance with the alternate test procedure set forth in the Decision and Order.

DATES: The Decision and Order is effective on June 21, 2019. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for illuminated exit signs located at 10 CFR 431.204 that addresses the issues presented in this waiver. At such time, Beghelli must use the relevant test procedure for this equipment for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Requests@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 431.401(f)(2)), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants Beghelli a waiver from the applicable test procedure at 10 CFR 431.204 for specified basic models of illuminated exit signs, and requires that Beghelli test and rate such equipment using the alternate test procedure specified in the Decision and Order. Beghelli's representations concerning the energy consumption of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy consumption of this equipment. (42 U.S.C. 6293(c))

Consistent with 10 CFR 431.401(j), not later than August 20, 2019, any manufacturer currently distributing in commerce in the United States equipment employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such equipment in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of that equipment in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 431.401.

Signed in Washington, DC, on June 7, 2019.

Alexander Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Case Number 2018–007

Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act of 1975, as amended (''EPCA''),[1] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include illuminated exit signs, the focus of this document. (42 U.S.C. 6291(37); 42 U.S.C. 6295(w))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for illuminated exit signs is contained in the Code of Federal Regulations (''CFR'') at 10 CFR 431.204, ''Uniform test method for the measurement of energy consumption of illuminated exit signs.''[3]

Under 10 CFR 431.401, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

II. Beghelli's Petition for Waiver: Assertions and Determinations

By letter with attachment dated June 26, 2018, Beghelli filed a petition for waiver from the illuminated exit sign test procedure set forth in 10 CFR 431.204. (Beghelli, No. 1 at pp. 1–6)[4] Beghelli requested a waiver for basic models that provide the dual function of exit signage and lighting for emergency egress (combination illuminated exit signs)[5], stating that the battery used in combination illuminated exit signs requires a substantially larger capacity to provide a minimum of 90 minutes of egress lighting, as required by safety codes. Beghelli further stated that it is not feasible to separate the power measurement associated with the exit signage and the egress lighting because a single battery and charging circuit supplies power for both functions.

As an alternate to the test procedure currently in place at 10 CFR 431.204, Beghelli requested that it be permitted to determine the power consumption for its combination illuminated exit signs using the following procedure:

1. Measure AC input power of the complete unit of combination illuminated exit sign with a fully charged battery.
2. Measure the DC output voltage and current to the light source of the unit.
3. Calculate the AC power consumption of the light source of the unit by applying a power factor correction of 30 percent as worst-case scenario. (Beghelli asserted that it arrived at this value based on its view that the circuitry design would not produce a loss exceeding 30 percent.)
4. If needed, calculate the stand-by power for the unit when the battery is fully charged using the following equation: Stand-by Power = Input Power (from Item 1) − Power of Basic Exit Sign Light Source (from Item 3).

On February 6, 2019, DOE published a notice announcing its receipt of the petition for waiver. 84 FR 2194 (''Notice of Petition for Waiver''). In the Notice of Petition for Waiver, DOE reviewed the alternate test procedure suggested by Beghelli. The suggested alternate procedure would measure the output power of the exit sign and apply conversion losses to back-calculate the input power to the exit sign. This approach would require assumptions that would likely result in an uncertainty of measured values. Beghelli contended that the input to output power conversion losses of all basic models under consideration would not exceed 30 percent. However, Beghelli's petition did not provide a sufficient basis for the 30-percent value. With the differences in battery types and sizes used in the various basic models addressed by the waiver request, it was not evident from the petition that the 30-percent value would apply across all the basic models of illuminated exit sign models identified in Beghelli's petition. Additionally, as DOE explained in the Notice of Petition for Waiver, it was unclear from the limited information provided by Beghelli in its petition whether the measurement of the DC output voltage and current measurement in Beghelli's suggested alternative testing method would result in a power measurement that could only be attributable to the light sources of the exit sign, without resorting to additional steps such as cutting wires or otherwise modifying the equipment's circuitry. 84 FR 2194, 2195. Accordingly, in light of the uncertainty regarding the basis for Beghelli's assumptions and the absence of any clarifying supplemental information from the company in support of those assumptions, DOE initially determined in its Notice of Petition for Waiver that the alternative test procedure suggested by Beghelli (*i.e.,* to use the estimated conversion losses in conjunction with a measurement for which it is uncertain whether the power consumption of the light source(s) of the exit sign is isolated) would not likely accurately calculate the combination illuminated exit sign input power demand of the affected basic models. 84 FR 2194, 2195–2196.

As an alternate to Beghelli's suggested approach, in the Notice of Petition for Waiver, DOE proposed that the company apply an alternate testing method that would not require application of conversion losses and, instead, would rely on a more direct measurement of the input power consumption attributable to the light source(s) of the exit sign. 84 FR 2194, 2195. Under this alternate test

[3] Although illuminated exit signs are covered products pursuant to EPCA, as a matter of administrative convenience and to minimize confusion among interested parties, DOE adopted illuminated exit sign provisions into subpart L of 10 CFR part 431 (the portion of DOE's regulations dealing with commercial and industrial equipment) because typically businesses, rather than individuals, purchase them. 70 FR 60407, 60409 (Oct. 18, 2005).

[4] A notation in this form provides a reference for information that is in the docket for this test procedure waiver (Docket No. EERE–2018–BT–WAV–0011) (available at *https://www.regulations.gov/document?D=EERE-2018-BT-WAV-0011-0001*) This notation indicates that the statement preceding the reference is document number 1 in the docket and appears at pages 2–4 of that document.

[5] DOE uses the term ''combination illuminated exit sign'' in this notice to mean an illuminated exit sign that includes or is packaged with (1) at least one auxiliary feature and (2) a battery electrically connected to the illumination source for the face.

procedure, the manufacturer would determine the input power demand of a unit of the basic model by testing an equivalent[6] unit of a non-combination illuminated exit sign. This approach is similar to an alternate test procedure approved by DOE for use in the waiver granted to Acuity Brands Lighting Inc. for similar equipment. 83 FR 11740 (March 16, 2018).

In the Notice of Petition for Waiver, DOE also solicited comments from interested parties on all aspects of the petition and Beghelli's suggested alternate method as well as DOE's proposed alternate method. 84 FR 2194, 2196. DOE received no comments in response to the Notice of Petition for Waiver.

For the reasons explained here and in the Notice of Petition for Waiver, absent a waiver, the basic models identified by Beghelli in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the recommended procedure suggested by Beghelli and concludes that it will not allow for the accurate measurement of the energy use of the combination illuminated exit sign, while alleviating the testing problems associated with Beghelli's implementation of DOE's applicable illuminated exit sign test procedure for the specified basic models. No comment or additional information was received in response to the Notice of Petition for Waiver. As such, for the reasons discussed, the following main issues with Beghelli's alternative test procedure remain unresolved: (1) Assumptions of conversion losses and (2) no non-destructive method of isolating the power consumption to the light source(s) of the exit sign.

Based on DOE's review of product specification sheets of the basic models for which Beghelli seeks a waiver, it appears that there are units of non-combination illuminated exit signs equivalent to units of these basic models. Thus, DOE is requiring that Beghelli test and rate specified combination illuminated exit sign basic models according to the alternate test procedure involving testing units of equivalent non-combination illuminated exit signs. Using this method, for each combination illuminated exit sign unit selected, Beghelli must assign the measured input power demand of a separate corresponding equivalent non-combination unit. For example, if DOE regulations require testing of two units, Beghelli must identify and measure the input power demand of two equivalent non-combination units, and assign the measured input power of each unit to each of the two combination units, respectively. In those instances where only a single, non-combination unit is available, Beghelli would be required to measure the input power demand of that single unit and assign the measured input power to the combination unit. See generally 10 CFR 429.48(a) and 10 CFR 429.11(b)(2).

The alternate test procedure provided by DOE and specified in this Decision and Order is substantively the same as that detailed in the Notice of Petition for Waiver.

This Decision and Order applies only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner.

Beghelli may request that the scope of this waiver be extended to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 431.401(g). Beghelli may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 431.401(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Beghelli may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2). As set forth above, the test procedure specified in this Decision and Order is not the same as the test procedure offered by Beghelli. If Beghelli believes that the alternate test method it suggested provides representative results and is less burdensome than the test method required by this Decision and Order, Beghelli may submit a request for modification under 10 CFR 431.401(k)(2) that addresses the concerns that DOE has specified with that procedure. Beghelli may also submit another less burdensome alternative test procedure not expressly considered in this notice under the same provision.

III. Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (''FTC'') staff concerning Beghelli's petition for waiver. The FTC staff did not have any objections to DOE granting a waiver to Beghelli for the specified basic models.

IV. Order

After careful consideration of all the material submitted by Beghelli, the various public-facing materials (*e.g.,* marketing materials, product specification sheets, and installation manuals) for the units identified in the petition, in this matter, it is *ordered* that:

(1) Beghelli must, as of the date of publication of this Order in the **Federal Register**, test and rate the following RBO–C combination illuminated exit sign basic models with the alternate test procedure as set forth in paragraph (2) of this Order:

Brand name	Basic model No.
Beghelli	RBO–C–6–36–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–6–42–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–6–54–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–6–60–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–6–72–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–6–90–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–6–100–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–6–120–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–6–36–LG1–U–W–2LRWP–9W

[6] A unit of a non-combination illuminated exit sign is equivalent only if it consists entirely of electricity-consuming components identical to all of those of the unit of the combination illuminated exit sign basic model, but does not include any auxiliary features, and contains an electrically-connected battery.

Brand name	Basic model No.
Beghelli	RBO–C–6–42–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–6–54–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–6–60–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–6–72–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–6–90–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–6–100–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–6–120–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–12–36–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–12–42–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–12–60–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–12–90–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–12–120–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–12–130–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–12–140–LR1–U–W–2LRWP–9W
Beghelli	RBO–C–12–36–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–12–42–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–12–60–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–12–90–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–12–120–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–12–130–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–12–140–LG1–U–W–2LRWP–9W
Beghelli	RBO–C–6–36–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–6–42–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–6–54–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–6–60–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–6–72–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–6–90–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–6–100–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–6–120–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–6–36–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–6–42–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–6–54–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–6–60–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–6–72–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–6–90–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–6–100–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–6–120–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–12–36–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–12–42–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–12–60–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–12–90–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–12–120–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–12–130–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–12–140–LR1–U–W–2LRWP–18W
Beghelli	RBO–C–12–36–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–12–42–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–12–60–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–12–90–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–12–120–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–12–130–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–12–140–LG1–U–W–2LRWP–18W
Beghelli	RBO–C–6–36–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–6–42–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–6–54–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–6–60–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–6–72–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–6–90–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–6–100–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–6–120–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–6–36–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–6–42–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–6–54–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–6–60–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–6–72–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–6–90–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–6–100–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–6–120–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–12–36–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–12–42–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–12–60–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–12–90–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–12–120–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–12–130–LR1–U–W–2LRWP–8W
Beghelli	RBO–C–12–140–LR1–U–W–2LRWP–8W

Brand name	Basic model No.
Beghelli	RBO–C–12–36–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–12–42–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–12–60–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–12–90–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–12–120–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–12–130–LG1–U–W–2LRWP–8W
Beghelli	RBO–C–12–140–LG1–U–W–2LRWP–8W

(2) The alternate test procedure for the Beghelli basic models referenced in paragraph (1) of this Order is the test procedure for illuminated exit signs prescribed by DOE at 10 CFR 431.204 except use the following instructions in place of 10 CFR 431.204(b):

Determine the energy efficiency of each combination illuminated exit sign unit under test (''combination unit'') by conducting the test procedure, as follows:

(i) Identify a unit of a non-combination illuminated exit sign (''non-combination unit'') equivalent to the combination unit. A non-combination unit is equivalent only if it consists entirely of electricity-consuming components identical to all of those of the combination unit, but does not include any auxiliary features, and contains an electrically connected battery. The equivalent non-combination unit must also have the same manufacturer and number of faces as the combination unit.

(ii) Test the equivalent non-combination unit using the DOE test procedure at 10 CFR, part 431, subpart L.

(iii) Assign the measured input power demand of the non-combination unit as the input power demand of the combination unit.

(3) *Representations.* Beghelli may not make representations about the energy use of the basic models referenced in paragraph (1) of this Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This waiver is issued on the condition that the statements, representations, and documents provided by Beghelli are valid. If Beghelli makes any modifications to the controls or configurations of a basic model referenced in paragraph (1), the waiver will no longer be valid for that basic model and Beghelli will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines that the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Beghelli may request that DOE rescind or modify the waiver if Beghelli discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Granting of this waiver does not release Beghelli from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on June 7, 2019.

Alexander Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–13216 Filed 6–20–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Public Meeting of the Supercritical CO_2 Oxy-Combustion Technology Group

AGENCY: National Energy Technology Laboratory, Office of Fossil Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The National Energy Technology Laboratory (NETL) will host a public meeting via WebEx July 9, 2019, of the Supercritical CO_2 Oxy-combustion Technology Group, to address challenges associated with oxy-combustion systems in directly heated supercritical CO_2 (sCO_2) power cycles.

DATES: The public meeting will be held on July 9, 2019, from 1 p.m. to 3 p.m. ET.

ADDRESSES: The public meeting will be held via WebEx and hosted by NETL.

FOR FURTHER INFORMATION CONTACT: For further information regarding the public meeting, please contact Seth Lawson by email at *Seth.Lawson@netl.doe.gov,* or by postal mail addressed to National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880. Please direct all media inquiries to the NETL Public Affairs Officer at (304) 285–0228.

SUPPLEMENTARY INFORMATION:

Instructions and Information on the Public Meeting

The public meeting will be held via WebEx. The public meeting will begin at 1:00 p.m. and end at 3:00 p.m. Interested parties may RSVP, to confirm their participation and receive login instructions, by emailing *Seth.Lawson@netl.doe.gov.*

The objective of the Supercritical CO_2 Oxy-combustion Technology Group is to promote a technical understanding of oxy-combustion for direct-fired sCO_2 power cycles by sharing information or viewpoints from individual participants regarding risk reduction and challenges associated with developing the technology.

Oxy-combustion systems in directly heated supercritical CO_2 (SCO_2) power cycles utilize natural gas or syngas oxy-combustion systems to produce a high temperature SCO_2 working fluid and have the potential to be efficient, cost effective and well-suited for carbon dioxide (CO_2) capture. To realize the benefits of direct fired SCO_2 power cycles, the following challenges must be addressed: Chemical kinetic uncertainties, combustion instability, flowpath design, thermal management, pressure containment, definition/prediction of turbine inlet conditions, ignition, off-design operation, transient capabilities, in-situ flame monitoring, and modeling, among others.

The format of the meeting will facilitate equal opportunity for discussion among all participants; all participants will be welcome to speak. Following a detailed presentation by one volunteer participant regarding lessons learned from his or her area of research, other participants will be provided the opportunity to briefly share lessons learned from their own research. Meetings are expected to take place every other month with a different volunteer presenting at each meeting.

Meeting minutes shall be published for those who are unable to attend.

This meeting is considered ''open-to-the-public;'' the purpose for this meeting has been examined during the planning stages, and NETL management has made specific determinations that affect attendance. All information presented at this meeting must meet criteria for public sharing or be published and available in the public domain. Participants should not communicate information that is considered official use only, proprietary, sensitive, restricted or protected in any way. Foreign nationals, who may be present, have not been approved for access to DOE information and technologies.

Dated: June 3, 2019.

Heather Quedenfeld,

Associate Director, Coal, Technology Development & Integration Center, National Energy Technology Laboratory.

[FR Doc. 2019–13226 Filed 6–20–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–475–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Application

Take notice that on June 3, 2019, Gulfstream Natural Gas System, L.L.C. (Gulfstream), 2701 North Rocky Point Drive, Suite 1050, Tampa, Florida 33607, filed an application pursuant to section 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations seeking authorization for its Phase VI Expansion Project. Gulfstream states the proposed project is designed to create approximately 78,000 dekatherms per day of mainline capacity from existing points of receipt in Mississippi and Alabama to an existing point of delivery in Manatee County, Florida, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Lisa A. Connolly, Director, Rates and Certificates, Gulfstream Natural Gas System, L.L.C., P.O. Box 1642, Houston, Texas 77251, by calling (713) 627–4102, by fax at (713) 627–5947, or by email *lisa.connolly@enbridge.com*.

Specifically, Gulfstream seeks authorization to: (i) Install one 16,000 horsepower turbine driven compressor unit at its existing Compressor Station 410 located in Mobile County, Alabama; (ii) abandon in place approximately 4 miles of 36-inch-diameter pipeline in Mobile County, Alabama; (iii) construct approximately 4 miles of thicker walled 36-inch-diameter pipeline to replace the abandoned pipeline; (iv) increase the maximum allowable operating pressure of approximately 59 miles of 36-inch-diameter onshore and offshore pipeline; (v) construct metering equipment at its existing Compressor Station 420 in Manatee County, Florida; (vi) construct other related auxiliary facilities; and (vii) establish and charge initial incremental recourse rates and system fuel retainage for firm service. Gulfstream estimates the cost of the proposed project to be approximately $155 million. Gulfstream requests that the Commission issue an order granting authorization by June 1, 2020, to allow Gulfstream to obtain a special permit for the increased pipeline pressure from the Pipeline and Hazardous Materials Safety Administration and commence construction by November 1, 2021, to meet the requested in service date of December 1, 2022.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at P 50 (2018).

good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) (18 CFR 385.214(d)(1)) of the Commission's Rules and Regulations.

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on July 8, 2019.

Dated: June 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–13234 Filed 6–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 619–164]

Pacific Gas and Electric Company and City of Santa Clara, California; Notice of Availability of the Draft Environmental Impact Statement for the Bucks Creek Hydropower Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Bucks Creek Hydropower Project (FERC No. 619) and has prepared a draft environmental impact statement (EIS) for the project. The project is located on Bucks, Grizzly, and Milk Ranch Creeks in Plumas County, California. Portions of the project are located within the Plumas National Forest.

The draft EIS contains staff's evaluations of the co-applicants' proposal and the alternatives for relicensing the Bucks Creek Hydropower Project. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff.

A copy of the draft EIS is available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street NE, Washington, DC 20426. The draft EIS also may be viewed on the Commission's website at *http://www.ferc.gov* under the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

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, contact FERC Online Support.

All comments must be filed by August 13, 2019.

The Commission strongly encourages electronic filing. Please file comments 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/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. 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–619–164.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

Commission staff will hold two public meetings for the purpose of receiving comments on the draft EIS. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization comments, while the evening meeting is primarily for receiving input from the public. All interested individuals and entities will be invited to attend one or both of the public meetings. A notice detailing the exact date, time, and location of the public meetings will be forthcoming.

For further information, please contact Alan Mitchnick at (202) 502–6074 or at *alan.mitchnick@ferc.gov.*

Dated: June 14, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–13132 Filed 6–20–19; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the internet in lieu of paper. See the previous discussion on filing comments electronically.

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: EC19–63–000.
Applicants: NRG Wholesale Generation LP, Entergy Mississippi, LLC.
Description: Response of GenOn Wholesale Generation LP and Entergy Mississippi, LLC, to May 16, 2019 deficiency letter.
Filed Date: 6/14/19.
Accession Number: 20190614–5211.
Comments Due: 5 p.m. ET 7/5/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–128–000.
Applicants: PSEG Keys Energy Center LLC, PSEG Fossil Sewaren Urban Renewal LLC.
Description: Self-Certifications of EG of PSEG Keys Energy Center LLC and PSEG Fossil Sewaren Urban Entitiy LLC.
Filed Date: 6/14/19.
Accession Number: 20190614–5145.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: EG19–129–000.
Applicants: Wessington Springs Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Wessington Springs Wind, LLC.
Filed Date: 6/14/19.
Accession Number: 20190614–5155.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: EG19–131–000.
Applicants: PSEG Keys Energy Center LLC.
Description: Self-Certification of EG of PSEG Keys Energy Center LLC.
Filed Date: 6/17/19.
Accession Number: 20190617–5143.
Comments Due: 5 p.m. ET 7/8/19.

Docket Numbers: EG19–132–000.
Applicants: PSEG Fossil Sewaren Urban Renewal LLC.
Description: Self-Certification of EG of PSEG Fossil Sewaren Urban Renewal LLC.
Filed Date: 6/17/19.
Accession Number: 20190617–5145.
Comments Due: 5 p.m. ET 7/8/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1739–002.
Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2019–06–17_Addtl Compliance by MISO TOs to revise Att O and ADIT Work Papers to be effective 1/1/2019.
Filed Date: 6/17/19.
Accession Number: 20190617–5098.
Comments Due: 5 p.m. ET 7/8/19.

Docket Numbers: ER18–2063–002.
Applicants: Flemington Solar, LLC.
Description: Compliance filing: Flemington Solar Compliance Filing to be effective 10/1/2018.
Filed Date: 6/17/19.
Accession Number: 20190617–5123.
Comments Due: 5 p.m. ET 7/8/19.

Docket Numbers: ER18–2323–003.
Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company, LLC.
Description: Compliance filing: 2019–06–17_Addtl Compliance Filing re METC Revisions to Att O Formula Rates to be effective 1/1/2019.
Filed Date: 6/17/19.
Accession Number: 20190617–5086.
Comments Due: 5 p.m. ET 7/8/19.

Docket Numbers: ER18–2323–004.
Applicants: Midcontinent Independent System Operator, Inc., ITC Midwest LLC, International Transmission Company.
Description: Compliance filing: 2019–06–17_Addtl Compliance Filing re ITC Companies Revisions to Att O to be effective 1/1/2019.
Filed Date: 6/17/19.
Accession Number: 20190617–5118.
Comments Due: 5 p.m. ET 7/8/19.

Docket Numbers: ER19–1806–001.
Applicants: Mitsui Bussan Commodities, Ltd.
Description: Compliance filing: Amendment to MBR filing to be effective 8/19/2019.
Filed Date: 6/17/19.
Accession Number: 20190617–5091.
Comments Due: 5 p.m. ET 7/8/19.

Docket Numbers: ER19–2154–000.
Applicants: Sayreville Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5161.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2155–000.
Applicants: Portland Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filings to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5162.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2156–000.
Applicants: Warren Generation, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5165.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2157–000.
Applicants: Mountain Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5166.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2158–000.
Applicants: Orrtanna Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5168.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2159–000.
Applicants: Shawnee Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5169.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2160–000.
Applicants: Titus Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5171.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2161–000.
Applicants: Hamilton Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5172.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2162–000.
Applicants: Blossburg Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5173.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2163–000.
Applicants: Hunterstown Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5174.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2164–000.
Applicants: Tolna Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5176.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2165–000.
Applicants: Western Interconnect LLC.
Description: Compliance filing: Order No. 845 Compliance Filing to be effective 5/22/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5180.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2166–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1888R9 Westar Energy, Inc. NITSA NOA to be effective 9/1/2019.
Filed Date: 6/17/19.
Accession Number: 20190617–5025.
Comments Due: 5 p.m. ET 7/8/19.

Docket Numbers: ER19–2168–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1889R8 Westar Energy, Inc.—Mindenmines NITSA NOA to be effective 9/1/2019.
Filed Date: 6/17/19.
Accession Number: 20190617–5037.
Comments Due: 5 p.m. ET 7/8/19.

Docket Numbers: ER19–2169–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1890R9 Westar Energy, Inc.—Moran NITSA NOA to be effective 9/1/2019.
Filed Date: 6/17/19.
Accession Number: 20190617–5064.
Comments Due: 5 p.m. ET 7/8/19.

Docket Numbers: ER19–2170–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP–5 Towns Dynamic Schedule Agmts Concurrence to be effective 6/8/2019.
Filed Date: 6/17/19.
Accession Number: 20190617–5079.
Comments Due: 5 p.m. ET 7/8/19.

Docket Numbers: ER19–2171–000.
Applicants: NSTAR Electric Company.
Description: Initial rate filing: Vineyard Wind Design and Engineering Agreement to be effective 6/17/2019.
Filed Date: 6/17/19.
Accession Number: 20190617–5097.
Comments Due: 5 p.m. ET 7/8/19.

Docket Numbers: ER19–2172–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: SA No. 5420 and SA No. 5421 re NITSAs Among PJM and NRG Power Marketing LLC to be effective 6/1/2019.
Filed Date: 6/17/19.
Accession Number: 20190617–5113.
Comments Due: 5 p.m. ET 7/8/19.

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: June 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–13239 Filed 6–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–191–000]

Texas Eastern Transmission, L.P.; Notice of Schedule for Environmental Review of the Bernville Compressor Units Replacement Project

On April 18, 2019, Texas Eastern Transmission, L.P. (Texas Eastern) filed an application in Docket No. CP19–191–000 requesting a Certificate of Public Convenience and Necessity pursuant to Sections 7(b) and 7(c) of the Natural Gas Act to abandon, construct, and operate certain natural gas pipeline facilities at its existing Bernville Compressor Station in Berks County, Pennsylvania. The proposed project is known as the Bernville Compressor Units Replacement Project (Project).

On April 30, 2019, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA	September 30, 2019.
90-day Federal Authorization Decision Deadline.	December 29, 2019.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Texas Eastern proposes to replace two existing compressor units (one 22,000 horsepower [hp] and one 19,800 hp unit) with two new compressor units (one 26,000 hp and one 18,100 hp unit). Texas Eastern would install software controls to limit the total horsepower of the 26,000 hp compressor unit to 23,700 hp. Therefore, no additional compression would occur as a result of this Project. The replacement activities would require the use of additional temporary workspace beyond the existing facility boundary.

Background

On June 7, 2019 the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Bernville Compressor Unit Replacement Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. Comments on the NOI should be received by the Commission in Washington, DC on or before 5:00 p.m. Eastern Time on July 8, 2019. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP19–191), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: June 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–13237 Filed 6–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–19–000]

Commission Information Collection Activities (FERC–542); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC–542 (Pipeline Rates: Rate Tracking) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously published a Notice in the **Federal Register** (4/10/2019) requesting public comments. The Commission received no public comments and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due July 22, 2019.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0070 (FERC–542), should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov,* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC19–19–000, by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission,

Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–542, Gas Pipelines Rates: Rate Tracking.

OMB Control No.: 1902–0070.

Type of Request: Three-year extension of the FERC–542 information collection requirements with no changes to the current reporting requirements.

Abstract: The information collected by FERC–542 is used by the Commission to implement the statutory provisions of Title IV of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432, and sections 4, 5, and 16 of the Natural Gas Act (NGA) (Pub. L.75–688) (15 U.S.C. 717–717w). These statutes allow the Commission to collect natural gas transmission cost information from interstate natural gas pipelines for the purpose of verifying that these costs, which are passed on to customers, are just and reasonable.

Natural gas pipelines are required by the Commission to track their transportation costs to allow for the Commission's review and, where appropriate, approve the pass-through of these costs to pipeline customers. FERC–542 accounts for costs involving: (1) Research, development, and deployment expenditures; (2) annual charge adjustments; and (3) periodic rate adjustments.

FERC–542 filings may be submitted at any time or on a regularly scheduled basis in accordance with the pipeline company's tariff. Filings may be either: (1) Accepted; (2) suspended and set for hearing; (3) minimal suspension; or (4) suspended for further review, such as technical conference or some other type of Commission action.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 154, 154.107, 154.4, 154.7, 154.201, and 154.401–154.403.

Type of Respondents: Jurisdictional Natural Gas Pipelines.

Estimate of Annual Burden: [1] The Commission estimates the total burden and cost [2] for this information collection as follows:

FERC–542 (GAS PIPELINE RATES: RATE TRACKING)

FERC data collection	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response (4)	Total annual burden hours & total annual cost ($) (rounded) (3) * (4) = (5)	Cost ($) per respondent (rounded) (5) ÷ (1)
FERC–542	90	2	180	2 hrs; $158	360 hrs; $28,440	$316
Total					360 hrs; $28,440	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: June 13, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–13238 Filed 6–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–473–000; PF18–2–000]

Equitrans, L.P.; Notice of Application

Take notice that on May 31, 2019, Equitrans, L.P. (Equitrans), 2200 Energy Drive, Canonsburg, Pennsylvania 15317, filed in Docket No. CP19–473–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting a certificate of public convenience and necessity to construct and operate new facilities as part of its Tri-State Corridor Project. Specifically, Equitrans proposes to construct: (i) Approximately 16.7 miles of pipeline in Washington County, Pennsylvania and Brooke County, West Virginia; (ii) three new receipt interconnects in Washington County, Pennsylvania with Rover Pipeline LLC and two non-jurisdictional facilities; (iii) a new delivery interconnect in Brooke County, West Virginia with the proposed power facility; and (iv) additional ancillary facilities. The Tri-State Corridor Project is designed to provide up to 140,000 dekatherms per day of east to west firm capacity on Equitrans' proposed Tri-State Corridor System to deliver natural gas to a proposed power facility. Equitrans estimates the cost of the Tri-State Corridor Project to be $ 96,249,417, all as more fully described in the application which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For

[1] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[2] FERC staff estimates that industry costs for salary plus benefits are similar to Commission costs. The cost figure is the FY2018 FERC average annual salary plus benefits ($164,820/year or $79/hour).

assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Matthew T. Eggerding, Assistant General Counsel, Equitrans, L.P., 2200 Energy Drive, Canonsburg, PA 15317, by telephone at (412) 553–5786, or by email *MEggerding@equitransmidstream.com;* or Michael R. Pincus, Van Ness Feldman LLP, 1050 Thomas Jefferson Street NW, Seventh Floor, Washington, DC 20007, by telephone at 202–298–1800, or by email *mrp@vnf.com.*

On October 20, 2017, the Commission staff granted Equitrans' request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF18- 2–000 to staff activities involving the Tri-State Corridor Project. Now, as of the filing of this application on May 31, 2019, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP19–473–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

[2] 18 CFR 385.214(d)(1).

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: July 5, 2019.

Dated: June 13, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–13236 Filed 6–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–477–000]

Mountain Valley Pipeline, LLC; Notice of Request Under Blanket Authorization

Take notice that on June 4, 2019, Mountain Valley Pipeline, LLC (Mountain Valley), 2200 Energy Drive, Canonsburg, Pennsylvania 15317, filed a prior notice application pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Mountain Valley's blanket certificate issued in Docket No. CP16–10–000. Mountain Valley requests authorization to install a new metering and regulating station, associated piping, and a tap site in Monroe County, West Virginia to allow Mountain Valley to deliver up to approximately 1.0 billion cubic feet per day to Columbia Gas Transmission, LLC's KA System, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Matthew T. Eggerding, Assistant General Counsel, 2200 Energy Drive, Canonsburg, PA 15317, or phone (412) 553–5786, or by email *MEggerding@equitransmidstream.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: June 14, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–13131 Filed 6–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR19–65–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: Tariff filing per 284.123(b),(e)/: COH Rates effective May 31 2019 to be effective 5/31/2019.
Filed Date: 6/13/19.
Accession Number: 201906135093.
Comments/Protests Due: 5 p.m. ET 7/5/19.

Docket Numbers: RP19–1314–000.
Applicants: Kinetica Deepwater Express, LLC.
Description: Compliance filing Compliance Filing—FERC Order No. 587–Y in Docket No. RM96–1–041 to be effective 8/1/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5035.
Comments Due: 5 p.m. ET 6/25/19.

Docket Numbers: RP19–1315–000.
Applicants: Kinetica Energy Express, LLC.
Description: Compliance filing Compliance Filing—FERC Order No. 587–Y in Docket No. RM96–1–041 to be effective 8/1/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5072.
Comments Due: 5 p.m. ET 6/25/19.

Docket Numbers: RP19–1316–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: Neg Rate 2019–06–13 Tenaska and Koch to be effective 6/14/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5160.
Comments Due: 5 p.m. ET 6/25/19.

Docket Numbers: RP19–1317–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Eclipse 6–14–2019 to be effective 6/14/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5050.
Comments Due: 5 p.m. ET 6/26/19.

Docket Numbers: RP19–1318–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Negotiated Rate Agreement Filing (Apache) to be effective 7/15/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5186.
Comments Due: 5 p.m. ET 6/26/19.

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: June 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–13235 Filed 6–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD19–13–000]

Reliability Technical Conference; Supplemental Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will hold a Technical Conference on Thursday, June 27, 2019, from 9:00 a.m. to 5:00 p.m. This Commissioner-led conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The purpose of the conference is to discuss policy issues related to the reliability of the Bulk-Power System. The final agenda with speakers for this event is attached.

The conference will be open for the public to attend. There is no fee for attendance. However, members of the public are encouraged to preregister online at: *http://www.ferc.gov/whats-new/registration/06-27-19-form.asp.*

Information on this event will be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov,* prior to the event. The conference will also be webcast and transcribed. Anyone with internet access who desires to listen to this event can do so by navigating to the Calendar of Events at *http://www.ferc.gov* and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc. at (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1 (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Lodie White (202) 502–8453, *Lodie.White@ferc.gov.* For information related to logistics, please contact Sarah McKinley at (202) 502–8368, *Sarah.Mckinley@ferc.gov.*

Dated: June 13, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–13233 Filed 6–20–19; 8:45 am]

BILLING CODE 6717–01–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: EC19–101–000.
Applicants: Dominion Energy South Carolina, Inc.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Dominion Energy South Carolina, Inc.
Filed Date: 6/13/19.
Accession Number: 20190613–5177.
Comments Due: 5 p.m. ET 7/5/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–127–000.
Applicants: West Columbia Storage LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of West Columbia Storage LLC.
Filed Date: 6/13/19.
Accession Number: 20190613–5176.
Comments Due: 5 p.m. ET 7/5/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2721–008.
Applicants: El Paso Electric Company.
Description: Supplement to December 28, 2018 Updated Market Power Analysis of El Paso Electric Company.
Filed Date: 6/14/19.
Accession Number: 20190614–5033.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER17–2575–003.
Applicants: Allegheny Energy Supply Company, LLC.
Description: Compliance filing: Allegheny Energy Supply Company Compliance Filing to be effective 1/3/2018.
Filed Date: 6/14/19.
Accession Number: 20190614–5053.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–81–001.
Applicants: Athens Energy, LLC.
Description: Compliance filing: Offer of Settlement (ER19–81) to be effective N/A.
Filed Date: 6/14/19.
Accession Number: 20190614–5083.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–1738–002.
Applicants: PSEG Fossil Sewaren Urban Renewal LLC.
Description: Tariff Amendment: Amendment to Application for MBR to be effective 6/30/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5102.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2129–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Cancel LGIA AltasGas Sonoran Energy LLC SA No. 158 to be effective 6/24/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5171.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2130–000.
Applicants: Dominion Energy South Carolina, Inc.
Description: § 205(d) Rate Filing: DOE_SRS 2015 Task Order Agr to be effective 8/13/2019.
Filed Date: 6/13/19.
Accession Number: 20190613–5172.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2131–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Attachment AF Revisions to Clarify Mitigated Transition State Offers to be effective 8/14/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5028.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2132–000.
Applicants: The Empire District Electric Company.
Description: § 205(d) Rate Filing: Revised Agreement for Wholesale Distribution Service to be effective 6/15/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5041.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2133–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–06–14_SA 3321 METC-Isabella Renewables I & II E&P (J717 J728) to be effective 6/5/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5051.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2134–000.
Applicants: Wheelabrator Shasta Energy Company Inc.
Description: § 205(d) Rate Filing: Request for Category 1 Seller Status in SW Region & Revised MBR Tariff to be effective 6/15/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5052.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2135–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: amended LGIA, Blythe Mesa Solar Project, SA 172 to be effective 6/15/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5054.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2136–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205 filing of tariff revisions re: Changes to Cash Collateral Requirements to be effective 8/14/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5056.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2137–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO–NE & NEPOOL; Rev. to Offer Cap Req. in Day-Ahead Energy Mkt. & Eff. Date Chg to be effective 10/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5057.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2138–000.
Applicants: Cabrillo Power II LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 6/15/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5097.
Comments Due: 5 p.m. ET 7/5/19.
Docket Numbers: ER19–2139–000.
Applicants: Dominion Energy South Carolina, Inc.
Description: Baseline eTariff Filing: Baseline OATT Filing to be effective 6/15/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5108.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2140–000.
Applicants: Shawville Power, LLC.
Description: § 205(d) Rate Filing: Notice of Succession Filing to be effective 5/17/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5109.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2141–000.
Applicants: New Castle Power, LLC.
Description: § 205(d) Rate Filing: Notice of Succession Filing to be effective 5/17/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5110.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2142–000.
Applicants: Brunot Island Power, LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 5/17/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5112.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2143–000.
Applicants: Gilbert Power, LLC.
Description: § 205(d) Rate Filing: Notice of Succession Filing to be effective 5/17/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5114.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2144–000.
Applicants: Sayreville Power, LLC.
Description: § 205(d) Rate Filing: Notice of Succession Filing to be effective 5/17/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5117.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2145–000.
Applicants: Portland Power, LLC.
Description: § 205(d) Rate Filing: Notice of Succession Filing to be effective 5/17/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5126.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2146–000.
Applicants: Warren Generation, LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 5/17/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5130.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2147–000.
Applicants: Mountain Power, LLC.
Description: § 205(d) Rate Filing: Notice of Succession Filing to be effective 5/17/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5136.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2148–000.
Applicants: Heritage Power Marketing, LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 5/17/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5137.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2149–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–06–14_Attachment X revisions relating to Shared Interconnection Facilities to be effective 8/14/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5146.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2150–000.
Applicants: Shawville Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5154.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2151–000.
Applicants: New Castle Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5157.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2152–000.
Applicants: Brunot Island Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5159.
Comments Due: 5 p.m. ET 7/5/19.

Docket Numbers: ER19–2153–000.
Applicants: Gilbert Power, LLC.
Description: Baseline eTariff Filing: New Baseline Reactive Tariff Filing to be effective 9/1/2019.
Filed Date: 6/14/19.
Accession Number: 20190614–5160.
Comments Due: 5 p.m. ET 7/5/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–31–000.
Applicants: Duquesne Light Company.
Description: Duquesne Light Co. submits the application re section 204 of the Federal Power Act for an Order Authorizing the Issuance of short-term indebtedness.
Filed Date: 6/11/19.
Accession Number: 20190614–0020.
Comments Due: 5 p.m. ET 7/2/19.

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: June 14, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–13130 Filed 6–20–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–38–000]

City and County of San Francisco v. Pacific Gas and Electric Company; Notice of New Comment Date

On January 28, 2019, City and County of San Francisco (San Francisco or Complainant) filed a formal complaint (Complaint) against Pacific Gas and Electric Company (PG&E) pursuant to sections 206, 306, and 309 of the

Federal Power Act[1] and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[2] alleging that PG&E has violated its open-access Wholesale Distribution Tariff (WDT) and that it is implementing its WDT in a manner that is unjust, unreasonable, and unduly discriminatory. The Complaint was noticed with a comment date of February 19, 2019.

On February 19, 2019, PG&E filed a notice in this proceeding stating that it filed a petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California, and thus the automatic stay provision of section 362 of the Bankruptcy Code applied to stay the instant proceeding. Subsequently, on May 30, 2019, PG&E filed an answer to the Complaint (Answer). PG&E notes in its Answer that on May 15, 2019, the Honorable Dennis Montali, the judge presiding over PG&E's bankruptcy proceeding, ruled that San Francisco ''could continue to prosecute this Complaint and FERC could continue to hear it.''[3]

Upon consideration, to provide other interested persons with an opportunity to move to intervene in this proceeding and comment on the Complaint, the comment date is hereby extended to and including June 27, 2019.

Dated: June 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–13231 Filed 6–20–19; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824e, 825e, and 825h.

[2] 18 CFR 385.206.

[3] Answer at n.4.

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System, Sam Rayburn Dam and Robert D. Willis Rate Schedules

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of proposed extension and opportunity for public review and comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), is proposing a two-year extension to the currently approved rate schedules for the Integrated System, the Sam Rayburn Dam, and the Robert Douglas Willis Hydropower Project (Robert D. Willis) for the period October 1, 2019 to September 30, 2021. Southwestern's current Integrated System rate schedules (P–13A, NFTS–13A, and EE–13), Sam Rayburn Dam rate schedule (SRD–15), and Robert D. Willis rate schedule (RDW–15) are set to expire September 30, 2019.

DATES: The consultation and comment period will begin on June 21, 2019 and will end on July 22, 2019. Written comments are due on or before July 22, 2019.

ADDRESSES: Comments should be submitted to Ms. Fritha Ohlson, Director, Division of Resources and Rates, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Ms. Fritha Ohlson, Director, Division of Resources and Rates, Office of Corporate Operations, (918) 595–6684, *fritha.ohlson@swpa.gov,* or facsimile transmission (918) 595–6684.

SUPPLEMENTARY INFORMATION: Originally established by Order 1865, Secretary of the Interior, dated August 31, 1943 and effective September 1, 1943 (8 FR 12142 (Sept. 3, 1943)), Southwestern is an agency within the U.S. Department of Energy created by section 302 of the Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977 (42 U.S.C. 7152). Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2 (Sept. 20, 1979), entitled *Power Marketing Administration Financial Reporting.* Procedures for public participation in power and transmission rate adjustments of the Power Marketing Administrations are found at title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR part 903). Procedures for the confirmation and approval of rates for the Power Marketing Administrations are found at title 18, part 300, subpart L of the Code of Federal Regulations (18 CFR part 300).

Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers (Corps). These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are the costs associated with Southwestern's transmission facilities that consist of 1,380 miles of high-voltage transmission lines, 27 substations, and 46 microwave and VHF radio sites. Costs associated with Sam Rayburn Dam and Robert D. Willis, two Corps hydropower projects that are isolated hydrologically, electrically, and financially from the Integrated System, are repaid by separate rate schedules.

Decision Rationale

Southwestern's current Integrated System rate schedules (P–13A, NFTS–13A, and EE–13) are based on the 2013 Power Repayment Study (PRS). Each subsequent annual PRS, through 2019, has indicated the need for a revenue adjustment that fell within a two percent range of the current revenue estimate. It is Southwestern's established practice for the Administrator to defer, on a case by case basis, revenue adjustments for the Integrated System if such adjustments are within plus or minus two percent of the revenue estimated from the current Integrated System rate schedules. Therefore, in line with the annual PRS results, the Administrator has deferred revenue adjustments in 2014, 2015, 2016, 2017, 2018, and 2019. The most recent deferral was in response to the 2019 Integrated System PRS, which concluded that the annual revenues needed to be increased by 0.8 percent. It was determined to be prudent to defer the increase and allow the current Integrated System rate schedules, which are set to expire September 30, 2019, to remain in effect. The deferral of a revenue adjustment (rate change) provides for rate stability and savings on the administrative cost of implementation, and recognizes that the revenue sufficiency will be re-examined in the following year's PRS.

Similarly, Southwestern's current rate schedules for the Sam Rayburn Dam and Robert D. Willis isolated rate systems, SRD–15 and RDW–15, are based on their respective 2015 PRSs. Each subsequent annual PRS, through 2019, has indicated the need for a revenue adjustment within a five percent range of the current revenue estimate. It is Southwestern's established practice for the Administrator to defer, on a case by case basis, revenue adjustments for an isolated rate system if such adjustments are within plus or minus five percent of the revenue estimated from the current rate schedule. Therefore, in line with the annual PRS results, the Administrator has deferred revenue adjustments for both Sam Rayburn Dam and Robert D. Willis in 2016, 2017, 2018, and 2019. The most recent deferral was in response to the 2019 PRSs, which concluded that the annual revenues needed to be increased by 1.7 percent for Sam Rayburn Dam and 3.7 percent for Robert D. Willis. It was determined to be prudent to defer the increase and allow the current rate schedules, which are set to expire September 30, 2019, to remain in effect. The deferral of a revenue adjustment (rate change) provides for rate stability and savings on the administrative cost of implementation and recognizes that the revenue sufficiency will be re-examined in the following year's PRS.

Therefore, Southwestern is proposing an extension of all current rate schedules, for the period October 1, 2019 to September 30, 2021. In accordance with 10 CFR 903.22(h), 903.23(a)(3), and 903.23(b), as amended (84 FR 5347 (Feb. 21, 2019)), and DOE Redelegation Order No. 00–002.10D (June 4, 2019), the Assistant Secretary may extend existing and provisional rates on an interim basis beyond the period specified by the Federal Energy Regulatory Commission (FERC).

The Integrated System rate schedules (P–13, NFTS–13 and EE–13) were placed into effect on an interim basis by the Deputy Secretary of Energy effective September 1, 2013, and were confirmed and approved by FERC on a final basis on January 9, 2014, for a period that ended September 30, 2017. Subsequently, a new section 2.3.6 was added to the Non-Federal Transmission Service (NFTS) rate schedule NFTS–13 in order to replace a stated-rate for customers taking Southwest Power Pool (SPP) Network Integration Transmission Service (NITS) with a revenue-requirement based methodology that includes determining the SPP NITS Annual Revenue Requirement (ARR) portion of Southwestern's NFTS ARR. The change had no impact on Southwestern's Integrated System revenue requirements and the rate schedule was re-designated NFTS–13A to reflect the change to the initial rate schedule. The NFTS–13A rate schedule change was placed into effect on an interim basis by the Deputy Secretary of Energy effective January 1, 2017, and confirmed and approved on a final basis by FERC on March 9, 2017, under FERC Docket No. EF14–1–001. A two-year extension of all Integrated System rate schedules was approved on an interim basis September 13, 2017, by the Deputy Secretary for the period October 1, 2017 through September 30, 2019. Since the Integrated System rate schedules were placed into effect and subsequently extended, there has been one additional change with no impact on revenue requirements. Southwestern added section 4.2 within the Hydro Peaking Power rate schedule P–13 in order to effect a uniform shift in the time Southwestern requires its customers to submit Peaking Energy schedules. The rate schedule was re-designated P–13A to reflect the change to the initial rate schedule. The P–13A rate schedule change was placed into effect on an interim basis by the Assistant Secretary effective July 1, 2019, and has been submitted to FERC for confirmation and approval on a final basis.

The current Sam Rayburn Dam rate schedule (SRD–15) was placed into effect on an interim basis by the Deputy Secretary on December 17, 2015, and was confirmed and approved by the FERC on a final basis on June 30, 2016, for a period that ends September 30, 2019.

The current Robert D. Willis rate schedule (RDW–15) was placed into effect on an interim basis by the Deputy Secretary of Energy on December 17, 2015, and was confirmed and approved by the FERC on a final basis on June 15, 2016, for a period that ends September 30, 2019.

The Administrator will review and consider all written comments and the information gathered when submitting the finalized Rate Schedules Extension to the Assistant Secretary for confirmation and approval on an interim basis.

Dated: June 13, 2019.

Mike Wech,

Administrator.

[FR Doc. 2019–13227 Filed 6–20–19; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9045–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 06/10/2019 Through 06/14/2019

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20190110, Draft, USFS, UT, High Uintas Wilderness Domestic Sheep Analysis Project (Ashley and UWC National Forests), Comment Period Ends: 08/05/2019, Contact: Paul Cowley 801–999–2177

EIS No. 20190131, Final, BLM, NV, Gemfield Mine Project, Review Period Ends: 07/22/2019, Contact: Kevin Hurrell 775–635–4000

EIS No. 20190132, Draft Supplement, USFS, MT, Montanore Evaluation Project, Comment Period Ends: 08/08/2019, Contact: Craig Towery 406–293–6211

EIS No. 20190133, Draft, USFS, ID, Huckleberry Landscape Restoration Project, Comment Period Ends: 08/05/2019, Contact: Ronda Bishop 208–253–0101

EIS No. 20190134, Draft, USFWS, CA, Placer County Conservation Program Environmental Impact Statement/Environmental Impact Report, Comment Period Ends: 08/20/2019, Contact: Mike Thomas 916–414–6600

EIS No. 20190135, Draft, BLM, ID, Programmatic EIS for Fuel Breaks in the Great Basin, Comment Period Ends: 08/05/2019, Contact: Marlo Draper 208–373–3812

EIS No. 20190136, Draft, BLM, CO, Draft Eastern Colorado Resource Management Plan and Environmental Impact Statement, Comment Period Ends: 09/20/2019, Contact: John Smeins, Project Manager 719–269–8581

EIS No. 20190138, Draft, FERC, CA, Bucks Creek Hydropower Project, Comment Period Ends: 08/05/2019, Contact: Office of External Affairs 866–208–3372

Amended Notice

EIS No. 20140102, Final, USFS, ID, Lost Creek-Boulder Creek Landscape Restoration Project, Review Period Ends: 08/05/2019, Contact: Erin Phelps 208–347–0301

Revision to FR Notice Published 04/04/2014; the U.S. Department of Agriculture's Forest Service is reopening the review period to end 08/05/2019 due to an errata to the Final EIS.

Dated: June 18, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–13269 Filed 6–20–19; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

2019 EXIM Bank Sub-Saharan Africa Advisory Committee Nomination Process

Nominations are now being accepted for EXIM Bank's 2019 Sub-Saharan Africa Advisory Committee. The Congressionally-established Sub-Saharan Africa Advisory Committee holds bi-annual meetings in which its primary task is to advise the Bank concerning its policy and programs, in particular on the extent to which the Bank is supporting the expansion of the its financial commitments in sub-Saharan Africa under its loan, guarantee, and insurance programs. Pending approval by EXIM's Board of Directors, the first meeting of the 2019 Sub-Saharan Africa Advisory Committee is scheduled to be held in October 2019.

The nomination period will be open for five weeks beginning Friday, June 21, 2019–Wednesday, July 24, 2019.

Companies and supporters of potential nominees must submit a letter on company letterhead stating reasons why their candidate should be considered for the Sub-Saharan Africa Advisory Committee. Self-nominations are permitted. All nomination forms must be completed and signed by all potential candidates. The candidate questionnaire form can be found at: *https://www.exim.gov/about/leadership/sub-saharan-africa-advisory-committee.*

All nominations are due COB Wednesday, July 24, 2019. Please email the candidate questionnaire form and additional information including supporter letters on letterhead to: *external@exim.gov.*

Joyce Brotemarkle Stone,

Assistant Corporate Secretary.

[FR Doc. 2019–13105 Filed 6–20–19; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

2019 EXIM Bank Advisory Committee Nomination Process

Nominations are now being accepted for the Export-Import Bank's 2019 Advisory Committee. The Congressionally-established Advisory Committee holds quarterly meetings in which its primary task is to advise the Bank concerning its policy and programs, in particular on the extent to which the Bank is meeting its mandate to provide competitive financing that equips U.S. exporters to compete for business in the global marketplace. Pending approval by EXIM's Board of Directors, the first meeting of the 2019 Advisory Committee is scheduled to be held in September 2019.

The nomination period will be open for five weeks beginning Friday, June 21, 2019–Wednesday, July 24, 2019.

Companies and supporters of potential nominees must submit a letter on company letterhead stating reasons why their candidate should be considered for the Advisory Committee. Self-nominations are permitted. All nomination forms must be completed and signed by all potential candidates. The candidate questionnaire form can be found at: *https://www.exim.gov/about/leadership/advisory-committee.*

All nominations are due COB Wednesday, July 24, 2019. Please email the candidate questionnaire form and additional information including supporter letters on letterhead to: *external@exim.gov.*

Joyce Brotemarkle Stone,

Assistant Corporate Secretary.

[FR Doc. 2019–13103 Filed 6–20–19; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0775]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (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.

DATES: Written comments should be submitted on or before July 22, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0775.

Title: Section 64.1903 Obligations of All Incumbent Local Exchange Carriers.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 255 respondents; 255 responses.

Estimated Time per Response: 500–6,056 hours.

Frequency of Response: Recordkeeping requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in *47 U.S.C. 151, 152, 154, 201, 202, 251, 271, 272,* and *303(r)* of the Communications Act of 1934, as amended.

Total Annual Burden: 155,280 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this collection to the OMB for approval of an extension in order to obtain the three year clearance from them. There is no change in the recordkeeping requirement. There is no change in the Commission's previous burden estimates. The Commission imposed recordkeeping requirements on independent local exchange carriers (LECs). Independent incumbent LECs wishing to offer international, interexchange services must comply with the requirements of the Competitive Carrier Fifth Report and Order, CC Docket Nos. 96–149 and 96–61. One of the requirements is that the independent incumbent LEC's international, interexchange affiliate (for facilities-based providers of international, interexchange services) must maintain books of account separate from such LEC's local exchange and other activities. See *47 CFR 64.1903* for the specific recordkeeping requirements.

This recordkeeping requirement is used by the Commission to ensure that independent incumbent LECs that provide international, interexchange services do so in compliance with the Communications Act, as amended, and with Commission policies and regulations.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–13212 Filed 6–20–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Payments Systems Surveys (FR 3054; OMB No. 7100–0332).

DATES: Comments must be submitted on or before August 20, 2019.

ADDRESSES: You may submit comments, identified by *FR 3054,* by any of the following methods:

- *Agency Website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Payments Systems Surveys.

Agency form number: FR 3054.

OMB control number: OMB No. 7100–0332.

Frequency: FR 3054a, five times per year; FR 3054b, annually; FR 3054c, semi-annually; FR 3054d, quarterly; and FR 3054e, five times per year.

Respondents: Financial institutions, including depository institutions, individuals, law enforcement, and nonfinancial businesses (banknote equipment manufacturers, or global wholesale bank note dealers).

Estimated number of respondents: FR 3054a, 4,000 respondents; FR 3054b, 300 respondents; FR 3054c, 25 respondents; FR 3054d, 250 respondents; and FR 3054e, 500 respondents.

Estimated average hours per response: FR 3054a, 0.75 hours; FR 3054b, 0.50 hours; FR 3054c, 30 hours; FR 3054d, 2.5 hours; and FR 3054e, 0.50 hours.

Estimated annual burden hours: FR 3054a, 15,000 hours; FR 3054b, 150 hours; FR 3054c, 1,500 hours; FR 3054d, 2,500 hours; and FR 3054e, 1,250 hours.

General description of report: The Payments Systems Surveys are used to obtain information specifically tailored to the Federal Reserve's operational and fiscal agency responsibilities.

Proposed revisions: The Board proposes to revise the Ad Hoc Payments Systems Survey (FR 3054a) to increase the frequency of surveys from once per year to five times annually, and reduce the number of respondents from 20,000 to 4,000. The increase in frequency of surveys will allow the Federal Reserve System flexibility to respond to diverse needs for data by surveying smaller groups of respondents multiple times throughout a year. Under the Ad Hoc Payments Systems Survey, the Board plans to administer online or in person surveys, in-depth interviews, and observations of focus groups in order to answer critical programmatic questions from U.S. currency stakeholders. In addition, the Board proposes to implement one new survey, the Currency Education Usability Survey (FR 3054e). The Currency Education Usability Survey would be conducted approximately five times per year to assess the usability of digital or online education materials on U.S. currency. The Currency Education Usability Survey may be conducted by the Board or a private firm.

Legal authorization and confidentiality: The information obtained from the FR 3054 may be used in support of the Board's role in overseeing the Federal Reserve Banks' provision of financial services to depository institutions; developing policies and regulations to foster the efficiency and integrity of the U.S. payment system; working with other central banks and international organizations to improve the payment system more broadly; conducting research on payments issues; and working with other federal agencies on currency design, quality issues, and to educate the global public on the security features of Federal Reserve notes. Therefore, the FR 3054 is authorized pursuant to the Board's authority under Sections 11(d),[1] 11A,[2] 13,[3] and 16[4] of the Federal Reserve Act. The FR 3054 is voluntary.

The questions asked on each survey would vary, so the ability of the Board to maintain the confidentiality of information collected would be determined on a case by case basis. It is possible that the information collected would constitute confidential commercial or financial information, which may be kept confidential under exemption 4 of the Freedom of Information Act (FOIA).[5] In circumstances where the Board collects information related to individuals, exemption 6 of the FOIA would protect information ''the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.''[6] To the extent the information collected relates to examination, operating, or condition reports prepared for the use of an agency supervising financial institutions, such information may be kept confidential under exemption 8 of the FOIA.[7]

Board of Governors of the Federal Reserve System, June 17, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–13107 Filed 6–20–19; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 248(d).

[2] 12 U.S.C. 248a.

[3] 12 U.S.C. 342.

[4] 12 U.S.C. 411, 412, 413, 414, 415, 416, 417, 421.

[5] 5 U.S.C. 552(b)(4).

[6] 5 U.S.C. 552(b)(6).

[7] 5 U.S.C. 552(b)(8).

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 July 19, 2019.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *US Metro Bancorp, Inc. Garden Grove, California;* to become a bank holding company by acquiring 100 percent of the voting shares US Metro Bank, also of Garden Grove, California.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First American Bank Corporation, Elk Grove Village, Illinois;* to acquire 100 percent of the voting shares of Continental National Bank, Miami, Florida.

Board of Governors of the Federal Reserve System, June 18, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–13244 Filed 6–20–19; 8:45 am]

BILLING CODE 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 (''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 July 3, 2019.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Patricia H. Wallace, individually, and as trustee of the George S. Hawn Family Lifetime Trust, George S. Hawn, Jr. Family 2011 GST Exempt Trust, JHC 2004 Electing Small Business Trust f/b/o Benjamin B. Wallace, Jr., JHC 2004 Electing Small Business Trust f/b/o Patricia ('Tricia') H. Wallace, and co-trustee for the Wallace Family 2016 GST Exempt Trust, all of Corpus Christi, Texas; Benjamin B. Wallace, individually and as co-trustee for the Wallace Family 2016 GST Exempt Trust, Corpus Christi, Texas; Christina H. Hawn, individually and as trustee of the Christina H. Hawn Family 2016 GST Exempt Trust, Corpus Christi, Texas; John W. Wallace and Sally Wallace, both of Corpus Christi, Texas; Christina H. Bonner, Corpus Christi, Texas; Clayton J. Hoover, Jr., San Antonio, Texas; Gipson S. H. Dolan, as trustee of Gipson Sherman Hawn Dolan Revocable Lifetime Trust, Naples, Florida; Hailey M. H. Brown, as trustee of Hailey McCollough Hawn Brown Revocable Lifetime Trust, Charlotte, North Carolina; Helena M.H. Perry, as trustee of Helena McFarlin Hawn Perry Revocable Lifetime Trust, Vero Beach, Florida; and Hewit H. Rome, as trustee of Hewit Hawn Rome Revocable Lifetime Trust, Naples, Florida;* a group acting in concert to acquire and retain voting shares of American Bank Holding Corporation and indirectly, acquire and retain shares of American Bank, National Association, both of Corpus Christi, Texas.

Board of Governors of the Federal Reserve System, June 18, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–13243 Filed 6–20–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026; Docket No. 2019–0003; Sequence No. 12]

Information Collection; Change Order Accounting

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a revision and extension of a previously approved information collection requirement concerning change order accounting.

DATES: Submit comments on or before August 20, 2019.

ADDRESSES: Submit comments identified by Information Collection 9000–0026, Change Order Accounting, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0026, Change Order Accounting'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information 9000–0026, Change Order Accounting''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0026, Change Order Accounting'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0026, Change Order Accounting.

Instructions: Please submit comments only and cite Information Collection 9000–0026, Change Order Accounting, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–550–0935, or email *camara.francis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 43.205 allows a contracting officer, whenever the estimated cost of a change or series of related changes under a contract exceeds $100,000, to assert the right in the clause at FAR 52.243–6, Change Order Accounting, to require the contractor to maintain separate accounts for each change or series of related changes. Each account shall record all incurred segregable, direct costs (less allocable credits) of work, changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Annual Reporting Burden

Respondents: 8,850.
Responses per Respondent: 12.
Annual Responses: 106,200.
Hours per Response: 1.
Total Burden Hours: 106,200.
Frequency of Collection: On occasion.
Affected Public: Businesses or other for-profit entities and not-for-profit institutions.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: June 17, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–13176 Filed 6–20–19; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2019–05; Docket No. 2019–0002; Sequence No. 14]

Notice of Intent To Prepare an Environmental Impact Statement for Land Ports of Entry

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Revised Notice of Intent; meeting updates.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) and the GSA have partnered to develop a program of projects at a number of Land Ports of Entry (LPOEs) so that FMCSA agents can safely and effectively inspect both commercial truck and bus traffic. GSA intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts from the proposed construction of six (6) inspection facilities at five (5) different LPOEs in both California and Arizona. A NOI was published concerning the EIS and scoping meetings on May 23, 2019. The revised Notice of Intent is to notify interested parties that dates for the scoping meetings have changed for the two (2) Arizona Sites. Meetings for the California scoping meetings have not changed.

DATES: The views and comments of the public are necessary to help determine the scope and content of the environmental analysis. Interested parties are encouraged to attend and provide written comments regarding the scope of the EIS and the proposed facilities by August 2, 2019.

Updated scoping meetings for the two (2) Arizona sites are listed below:

• San Luis II, AZ, Wednesday, July 17, 2019, 4:00 p.m. to 6:00 p.m.

• Nogales Mariposa, AZ, Thursday, July 18, 2019, 4:00 p.m. to 6:00 p.m.

ADDRESSES: The meetings will be conducted in an open house format, where project information will be presented and distributed. Comments regarding the scope of the EIS and the proposed facilities may be sent to the point of contact listed in the **FOR FURTHER INFORMATION** section.

The meetings will be held at the following locations:

• *San Luis II, AZ Site*, Holiday Inn Express and Suites Yuma, 2044 S Avenue 3E, Yuma, AZ 85365, (928) 317–1400,

• *Nogales Mariposa, AZ Site*, Holiday Inn Express Nogales, 850 W Shell Road, Nogales, AZ 85621, telephone (520) 281–0123.

FOR FURTHER INFORMATION CONTACT:

• *Email:* Osmahn Kadri at *osmahn.kadri@gsa.gov,*

• *Mail:* Attn: Osmahn Kadri, NEPA Program Manager, 50 United Nations Plaza, 3345, Mailbox #9, San Francisco, CA 94102.

• *Telephone:* (415) 522–3617 (Please also call this number if special assistance is needed to attend and participate in the public scoping meetings).

SUPPLEMENTARY INFORMATION:

Background

The FMCSA mission includes ensuring that commercial vehicles entering the United States (U.S.) and travelling on U.S. Highways are operating safely and within current U.S. standards. To achieve this mission and ensure safety on public highways, FMCSA must inspect commercial and bus traffic at points of destination or origin, the U.S.-Mexico Border being a main point of origin.

FMCSA inspectors currently inspect both bus and commercial truck traffic at multiple LPOEs along the U.S.-Mexico Border in both California and Arizona at facilities that were not built for their needs and at sites which do not allow for thorough, safe inspection of vehicles. In April of 2018, FMCSA received funding from the Committees of Congress to develop, design, and construct facilities that will allow them to meet their mission goals safely and effectively.

It has been determined that to achieve this mission, six (6) inspection facilities will be needed at five (5) different LPOEs in both California and Arizona. The two (2) Arizona LPOEs are described below:

- Nogales Mariposa, AZ (Commercial Truck Inspection)
- San Luis II, AZ (Commercial Truck Inspection)

Alternatives

The EIS will consider three Alternatives; a ''preferred build alternative'' for six (6) facilities at five (5) locations, a ''smaller footprint'' build alternative for six (6) facilities at the same five (5) locations, and a ''no action'' alternative. The alternatives for the Two (2) Arizona locations are described below:

San Luis II LPOE, AZ

The proposed truck inspection facility would be located on the northern edge of the LPOE property line. A portion of the site work would be constructed on newly acquired Federal land that will allow access from the site after hours. Site work would require the clearing of the existing site, extension of existing utilities for electrical, sanitary sewer and water, paving of the truck path, and relocating the existing CBP impound lot. Facility construction would include an inspection canopy with pits and an FMCSA administration building. The other build alternative would consist of a smaller facility footprint on the same location.

Nogales Mariposa LPOE, AZ

The proposed truck inspection facility would be located on privately owned land, north of the existing LPOE. Site work would require the clearing of the existing site, extension of existing utilities for electrical, sanitary sewer and water, paving of the truck path. Facility construction would include an inspection canopy with pits and a FMCSA administration building. The other build alternative would consist of a smaller facility footprint on the same location.

The ''no action'' alternative assumes that no new facility would be constructed at any of the sites and the LPOEs and FMCSA operations would continue to operate under current conditions.

Dated: June 18, 2019.

Jared Bradley,

Director, Portfolio Management Division, Pacific Rim Region, Public Buildings Service.

[FR Doc. 2019–13293 Filed 6–20–19; 8:45 am]

BILLING CODE 6820–YF–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0078; Docket No. 2019–0003; Sequence No. 25]

Information Collection; Certain Federal Acquisition Regulation Part 15 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning certain Federal Acquisition Regulation part 15 requirements. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and whether the proposed consolidation of the information collections is problematic. OMB has approved this information collection for use through July 31, 2019. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by August 20, 2019.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection by either of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0078, Certain Federal Acquisition Regulation Part 15 Requirements.

Instructions: All items submitted must cite Information Collection 9000–0078, Certain Federal Acquisition Regulation Part 15 Requirements. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0078, Certain Federal Acquisition Regulation Part 15 Requirements.

B. Need and Uses

DoD, GSA, and NASA are in the process of combining OMB control numbers for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify all burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports revision and extension of the expiration date of OMB control number 9000–0078 and combines it with the previously approved information collections OMB control numbers 9000–0115 and 9000–0173, with the new title ''Certain Federal Acquisition Regulation Part 15 Requirements''. Upon approval of this consolidated information collection, OMB control numbers 9000–0115 and 9000–0173 will be discontinued. The burden requirements previously approved under the discontinued numbers will be covered under OMB control number 9000–0078.

This clearance covers the information that offerors/contractors must submit to comply with the following FAR requirements:

1. *15.407–2(e), Make-or-buy programs.* When prospective contractors are required to submit proposed make-or-buy program plans for negotiated acquisitions, paragraph (e) requires the following information in their proposal: A description of each major item or work effort; categorization of each major item or work effort as ''must make,'' ''must buy, or ''can either make or buy;'' for each item or work effort categorized as ''can either make or buy,'' a proposal either to ''make'' or to ''buy;'' reasons for categorizing items and work efforts as ''must make'' or ''must buy,'' and proposing to ''make'' or to ''buy'' those categorized as ''can either make or buy;'' designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area; identification of proposed subcontractors, if known, and their location and size status; any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission; and any other information the contracting officer requires in order to evaluate the program.

2. *52.215–9, Changes or Additions to Make-or-Buy Program.* This clause requires the contractor to submit, in writing, for the contracting officer's advance approval a notification and justification of any proposed change in the make-or-buy program incorporated in the contract.

3. *52.215–19, Notification of Ownership Changes.* This clause requires contractors to notify the administrative contracting officer when the contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records. Notice of changes of ownership are necessary to adequately administer the cost principle at FAR 31.205–52, Asset valuations, which addresses the allowability of certain costs resulting from asset valuations following business combinations.

4. *52.215–22, Limitations on Pass-Through Charges—Identification of Subcontract Effort.* This provision requires offerors submitting a proposal for a contract, task order, or delivery order to provide the following information with their proposal: (1) The total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor; (2) if the offeror intends to subcontract more than 70 percent of the total cost of work to be performed,

the amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s), and a description of the value added by the offeror as related to the work to be performed by the subcontractor(s); and (3) if any subcontractor proposed intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed the amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s), and a description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

5. *52.215–23, Limitations on Pass-Through Charges.* This clause requires contractors to provide a description of the value added by the contractor or subcontractor, as applicable, as related to the subcontract effort if this effort changes from the amount identified in the proposal such that it exceeds 70 percent of the total cost of work to be performed. The following contract types are excluded from this information collection requirement: A firm-fixed-price contract awarded on the basis of adequate price competition; a fixed-price contract with economic price adjustment awarded on the basis of adequate price competition; a firm-fixed-price contract for the acquisition of a commercial item; a fixed-price contract with economic price adjustment, for the acquisition of a commercial item; a fixed-price incentive contract awarded on the basis of adequate price competition; or a fixed-price incentive contract for the acquisition of a commercial item.

C. Annual Reporting Burden

Respondents/Recordkeepers: 4,653.

Total Annual Responses: 29,953.

Total Burden Hours: 62,241 (62,236 reporting hours + 5 recordkeeping hours).

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB control number 9000–0078, Certain Federal Acquisition Regulation Part 15 Requirements, in all correspondence.

Dated: June 17, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–13140 Filed 6–20–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0074; Docket No. 2019–0003; Sequence No. 14]

Information Collection; Contract Funding—Limitation of Costs/Funds

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Federal Acquisition Regulation (FAR) Council invites the public to comment upon an extension of a previously approved information collection requirement concerning limitation of costs/funds.

DATES: Submit comments on or before August 20, 2019.

ADDRESSES: The FAR Council invites interested persons to submit comments on this collection by either of the following methods:

• *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0074, Contract Funding—Limitation of Costs/Funds.

Instructions: Please submit comments only and cite Information Collection 9000–0074, Contract Funding—Limitation of Costs/Funds, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Funk, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA at 202–357–5805 or *kevin.funk@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Solicitation of Public Comment

Written comments and suggestions from the public should address one or more of the following four points:

(1) Evaluate whether the 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 submission of responses).

B. Purpose

In accordance with FAR 52.232–20 and 52.232–22, firms performing under fully funded or incrementally funded cost-reimbursement Federal contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or (2) The total cost for the performance of the contracts will be greater or substantially less than estimated.

As a part of the notification, the contractors must provide a revised estimate of total cost. The frequency of this collection of information is variable, contingent upon both funding and spending patterns.

C. Annual Reporting Burden

Respondents: 1,928.
Responses per Respondent: 6.
Total Annual Responses: 11,568.
Hours per Response: 0.33.
Total Burden Hours: 3,817.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0074, Contract Funding—Limitation of Costs/Funds, in all correspondence.

Dated: June 14, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–13138 Filed 6–20–19; 8:45 am]

BILLING CODE 6820–EP–P

GOVERNMENT ACCOUNTABILITY OFFICE

Request for Nominations for the Physician-Focused Payment Model Technical Advisory Committee (PTAC)

AGENCY: Government Accountability Office (GAO).

ACTION: Request for letters of nomination and resumes.

SUMMARY: The Medicare Access and CHIP Reauthorization Act of 2015 established the Physician-Focused Payment Model Technical Advisory Committee to provide comments and recommendations to the Secretary of Health and Human Services on physician payment models and gave the Comptroller General responsibility for appointing its members. GAO is now accepting nominations of individuals for this committee.

DATES: Letters of nomination and resumes should be submitted no later than July 19, 2019, to ensure adequate opportunity for review and consideration of nominees prior to appointment. Appointments will be made in October 2019.

ADDRESSES: Submit letters of nomination and resumes by either of the following methods:

Email: PTACcommittee@gao.gov. Include PTAC Nominations in the subject line of the message, or Mail: U.S. GAO, Attn: PTAC Nominations, 441 G Street NW, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Greg Giusto at (202) 512–8268 or *giustog@gao.gov* if you do not receive an acknowledgement within a week of submission or if you need additional information. For general information, contact GAO's Office of Public Affairs, (202) 512–4800.

Authority: Pub. L. 114–10, Sec. 101(e), 129 Stat. 87, 115 (2015).

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2019–13249 Filed 6–20–19; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–TS–19–002, Multi-Site Study of the Health Implications of Exposure to PFAS-Contaminated Drinking Water.

Date: July 24–25, 2019.

Time: 8:30 a.m.–5:00 p.m., EDT.

Place: W Atlanta-Buckhead, 3377 Peachtree Rd, NE, Atlanta, GA 30326.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Mikel Walters, Ph.D., Scientific Review Official, NCIPC, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, Georgia 30341, Telephone (404) 639–0913, *MWalters@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, 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. 2019–13178 Filed 6–20–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2778]

Agency Information Collection Activities; Proposed Collection; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles

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 requests for data needed to evaluate requests for threshold of regulation exemptions for substances used in food-contact articles.

DATES: Submit either electronic or written comments on the collection of information by August 20, 2019.

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 August 20, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 20, 2019. 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–2019–N–2778 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles.'' 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.

Threshold of Regulation for Substances Used in Food-Contact Articles—21 CFR 170.39

OMB Control Number 0910–0298—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless one of the following is applicable: (1) It conforms to an exemption for investigational use under section 409(j) of the FD&C Act; (2) it conforms to the terms of a regulation prescribing its use; or (3) in the case of a food additive which meets the definition of a food-contact substance in section 409(h)(6) of the FD&C Act, there is either a regulation authorizing its use in accordance with section 409(a)(3)(A) or an effective notification in accordance with section 409(a)(3)(B).

The regulations in § 170.39 (21 CFR 170.39) established a process that provides the manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation or an effective notification. The Agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration would be at or below 0.5 part per billion (ppb). The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances. To determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes the following components: (1) The chemical composition of the substance for which the request is made; (2) detailed information on the conditions of use of the substance; (3) a clear statement of the basis for the request for exemption from regulation as a food additive; (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance;

(5) results of a literature search for toxicological data on the substance and its impurities; and (6) information on the environmental impact that would result from the proposed use.

We use this information to determine whether the food-contact substance meets the threshold criteria:

Description of Respondents: Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (*i.e.,* food packaging and food processing equipment) or of the articles themselves.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR 170.39	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Threshold of regulation for substances used in food-contact articles	4	1	4	48	192

[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 adjustments to decrease our burden estimate due to the decrease in the number of respondents. The adjustment resulted in decreases of 3 responses and 144 total burden hours.

We estimate that approximately 4 requests per year will be submitted under the threshold of regulation exemption process of § 170.39, for a total of 192 hours. The threshold of regulation process offers an advantage over the premarket notification process for food-contact substances established by section 409(h) of FD&C Act (OMB control number 0910–0495) in that the use of a substance exempted by FDA is not limited to only the manufacturer or supplier who submitted the request for an exemption. Other manufacturers or suppliers may use exempted substances in food-contact articles as long as the conditions of use (*e.g.,* use levels, temperature, type of food contacted, etc.) are those for which the exemption was issued. As a result, the overall burden on both Agency and the regulated industry would be significantly less in that other manufacturers and suppliers would not have to prepare, and we would not have to review, similar submissions for identical components of food-contact articles used under identical conditions. Manufacturers and other interested persons can easily access an up-to-date list of exempted substances which is on display at FDA's Dockets Management Staff and on the internet at *https://www.fda.gov/food/packaging-food-contact-substances-fcs/threshold-regulation-exemptions-substances-used-food-contact-articles.* Having the list of exempted substances publicly available decreases the likelihood that a company would submit a food additive petition or a notification for the same type of food-contact application of a substance for which the Agency has previously granted an exemption from the food additive listing regulation requirement.

Dated: June 14, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–13117 Filed 6–20–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–1536]

Opioid Analgesic Drugs: Considerations for Benefit-Risk Assessment Framework; Draft 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 draft guidance for industry entitled ''Opioid Analgesic Drugs: Considerations for Benefit-Risk Assessment Framework.'' The purpose of this guidance is to describe the benefit-risk framework the Agency uses in evaluating applications for opioid analgesic drugs. This guidance summarizes the information that should be included in a new drug application (NDA) for an opioid analgesic drug to facilitate the Agency's benefit-risk assessment.

DATES: Submit either electronic or written comments on the draft guidance by August 20, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance 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–2019–D–1536 for ''Opioid Analgesic Drugs: Considerations for Benefit-Risk Assessment Framework.'' 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 the draft 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 draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sharon Hertz, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 3170, Silver Spring, MD 20993–0002, 301–796–1225.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Opioid Analgesic Drugs: Considerations for Benefit-Risk Assessment Framework.'' The purpose of this guidance is to describe the benefit-risk framework the Agency uses in evaluating applications for opioid analgesic drugs. This guidance summarizes the information that should be included in an NDA for an opioid analgesic drug to facilitate the Agency's benefit-risk assessment.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Opioid Analgesic Drugs: Considerations for Benefit-Risk Assessment Framework.'' 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 draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information 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 draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: June 17, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–13221 Filed 6–20–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–1620]

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of May 6, 2019. The amendment is being made to reflect a change in the **DATES**, *Agenda,* and *Procedure* portions of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Lauren Tesh Hotaki, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *ODAC@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 6, 2019 (84 FR 19788), FDA announced that a meeting of the Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee would be held on June 20, 2019. On page 19788, in the first column, the **DATES** portion of the document is changed to read as follows:

Dates: The meeting will be held on June 20, 2019, from 9 a.m. to 3:30 p.m.

On page 19789, in the second column, the second paragraph of the *Agenda* portion of the document is changed to read as follows:

During the afternoon session, information will be presented to gauge investigator interest in exploring potential pediatric development plans for one product in early stages of development for adult cancer indications. The subcommittee will consider and discuss issues concerning diseases to be studied, patient populations to be included, and possible study designs in the development of these products for pediatric use. The discussion will also provide information to the Agency pertinent to the formulation of written requests for pediatric studies, if appropriate. The product under consideration is ONC201, presentation by Oncoceutics Inc.

On page 19789, in the third column, the third sentence of the *Procedure* portion of the document is changed to read as follows:

Oral presentations from the public will be scheduled between approximately 10:50 a.m. and 11:20 a.m. and 1:50 p.m. and 2:20 p.m.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: June 14, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–13142 Filed 6–20–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2313]

Agency Information Collection Activities; Proposed Collection; Comment Request; Study of Oncology Indications in Direct-to-Consumer Television Advertising

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) 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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled ''Study of Oncology Indications in Direct-to-Consumer Television Advertising.'' This research consists of two studies examining the presentation of oncology indications in direct-to-consumer (DTC) television ads.

DATES: Submit either electronic or written comments on the collection of information by August 20, 2019.

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 August 20, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 20, 2019. 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–2019–N–2313 for ''Study of Oncology Indications in Direct-to-Consumer Television Advertising.'' 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: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10 a.m.–12 p.m., 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov. For copies of the questionnaire contact:* Office of Prescription Drug Promotion (OPDP) Research Team, *DTCresearch@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 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.

Study of Oncology Indications in Direct-to-Consumer Television Advertising

(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.

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 provides 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. This study falls under the topic of advertising features (content and format).

Oncology products are increasingly being promoted to consumers via DTC television advertising. Oncology indications are often complicated and supported by different clinical endpoints such as overall survival, overall response rate, and progression-free survival (Ref. 1) that are referenced in the DTC TV ads. The first objective of this project is to determine whether disclosing information about the nature of the endpoints that support the indications for oncology products helps consumers understand the drug's efficacy. This objective complements OPDP's research examining disclosing information about FDA's accelerated approval pathway to consumers (May 8, 2019, 84 FR 20148) and OPDP's research on disclosing oncology information to healthcare professionals (OMB control number 0910–0864—Disclosures of Descriptive Presentations in Professional Oncology Prescription Drug Promotion). Although these studies all contribute to our knowledge of the communication of cancer treatment information, the current study specifically examines particular endpoints that are well-known to the professional oncology community and are now used in DTC advertising.

Because of the length of some indications, sponsors sometimes convey some of the indication in superimposed text rather than in the audio in the TV ads. The second objective is to test whether consumers adequately comprehend indication statements when portions of the indication are presented only in the superimposed text of television ads while other information is conveyed in the audio. This objective extends OPDP's previous research on the use of dual-modality *risk* presentations (presenting the information in two modes at the same time; OMB control numbers 0910–0634—Experimental Evaluation of the Impact of Distraction, 0910–0652—Experimental Study: Toll-Free Number for Consumer Reporting of Drug Product Side Effects in Direct-to-Consumer Television Advertisements for Prescription Drugs, and 0910–0772—Eye Tracking Study of Direct-to-Consumer Prescription Drug Advertisement Viewing) to the context of *indication* statements. This previous research supports the use of dual modality to increase consumers' understanding of risk information (January 27, 2012, 77 FR 4273) (Refs. 2 and 3).

We plan to conduct two rounds (one for each objective) of nine 1-hour in-person cognitive interviews of adults 18 years of age or older to refine the questionnaires and stimuli (18 participants total). We plan to conduct two pretests (one for each objective) not longer than 20 minutes, administered via internet panel, to test the experimental manipulations and pilot the main study procedures.

We plan to conduct two main studies (one for each objective) not longer than 20 minutes, administered via internet panel. For Study 1, we will create two television ads for fictitious oncology prescription drugs to increase the generalizability of the results (one solid tumor indication and one hematology indication). The ads will include audio claims about overall survival, overall response rate with and without a disclosure, or progression-free survival with and without a disclosure (see table 1 for the Study 1 design).

Some current television ads for oncology products include disclosures that are intended to help consumers differentiate surrogate endpoints like progression-free survival and overall response rate from overall survival. Examples include ''At the time of analysis, overall survival comparison was not yet available'' and ''Clinical trials are ongoing to determine if there is an overall survival benefit.'' The disclosure we use in the study will be based on disclosures currently in use and will be informed by consumer feedback elicited in focus groups conducted prior to the cognitive testing (approved under OMB control number 0910–0695). For example, the study disclosure may include language such as ''We currently do not know if Drug X helps people live longer.''

Participants will be randomly assigned to view one prescription drug television ad and then complete a questionnaire that assesses whether participants noticed the disclosure, their interpretations of the disclosure, their retention of the endpoint, and their perceptions of the drug's benefits and risks. We will also measure covariates such as demographics, cancer history, and literacy. Without a disclosure, we hypothesize that participants will not differentiate between overall survival, overall response rate, and progression-free survival. We hypothesize that a disclosure will help participants understand the surrogate endpoints (*i.e.,* overall response rate and progression-free survival) and thus will lead to greater understanding of the drug's efficacy compared with conditions without the disclosure. We will explore unintended effects of the disclosure, such as whether the disclosure lowers perceived efficacy compared with the overall survival condition.

For the second objective, in Study 2 we will vary the presentation of the products' indication, such that material information related to the indication will appear in superimposed text only, in the audio only, in both superimposed text and audio, or in neither (the control condition; see tables 2 and 3 for the Study 2 design). Participants will be randomly assigned to view a prescription drug television ad and then complete a questionnaire that assesses their retention and comprehension of the information. Following previous research on dual-modality presentations, we hypothesize that participants who view an ad with the material information in the audio and text will have greater retention of that information than participants in any other condition. We also hypothesize that participants who view an ad with the material information in the audio only will have greater retention of that information than participants in the superimposed text condition and the control condition. To test Study 1 and 2 hypotheses, we will conduct inferential statistical tests such as logistic regression and analysis of variance.

The questionnaires are available upon request from *DTCresearch@fda.hhs.gov.*

For all phases of this research, we will recruit a general population sample of adult volunteers 18 years of age or older. We will exclude individuals who work for the Department of Health and Human Services or work in the healthcare, marketing, or pharmaceutical industries. We will use literacy quotas to ensure that our sample includes participants with a range of literacy skills. We will also exclude pretest participants from the main studies, and participants will not be able to participate in both Studies 1 and 2. With the sample sizes described below, we will have sufficient power to detect small-sized effects in Studies 1 and 2 (table 4).

TABLE 1—STUDY 1 DESIGN

Indication	Overall survival	Overall response rate	Overall response rate with disclosure	Progression-free survival	Progression-free survival with disclosure
Solid Tumor					
Hematology					

Note: The solid tumor condition will be non-small cell lung cancer. The hematology condition will be multiple myeloma. Claims and disclosures are TBD, based on focus group feedback. Overall survival and progression-free survival claims will be the same for both indications. Study 1 will use the control ad from Study 2.

TABLE 2—STUDY 2 DESIGN: SOLID TUMOR

Indication presentation			
Material information in superimposed text only	Material information in audio only	Material information in superimposed text + audio	Material information not in superimposed text or audio (control)
Audio: Drug X is for adults with advanced non-small cell lung cancer. Superimposed text: Drug X is for adults with advanced non-small cell lung cancer previously treated with platinum-based chemotherapy, who have a certain type of ALK gene.	Audio: Drug X is for adults with advanced non-small cell lung cancer previously treated with platinum-based chemotherapy, who have a certain type of ALK gene. Superimposed text: Drug X is for adults with advanced non-small cell lung cancer.	Audio: Drug X is for adults with advanced non-small cell lung cancer previously treated with platinum-based chemotherapy, who have a certain type of ALK gene. Superimposed text: Drug X is for adults with advanced non-small cell lung cancer previously treated with platinum-based chemotherapy, who have a certain type of ALK gene.	Audio: Drug X is for adults with advanced non-small cell lung cancer. Superimposed text: Drug X is for adults with advanced non-small cell lung cancer.

Note. Study 2 will use the overall survival ad from Study 1.

TABLE 3—STUDY 2 DESIGN: HEMATOLOGY

Indication presentation			
Material information in superimposed text only	Material information in audio only	Material information in superimposed text + audio	Material information not in superimposed text or audio (Control)
Audio: Drug Y is used to treat multiple myeloma. Superimposed text: Drug Y is used to treat multiple myeloma in combination with dexamethasone, in people who have received at least three prior medicines to treat multiple myeloma.	Audio: Drug Y is used to treat multiple myeloma in combination with dexamethasone, in people who have received at least three prior medicines to treat multiple myeloma. Superimposed text: Drug Y is used to treat multiple myeloma.	Audio: Drug Y is used to treat multiple myeloma in combination with dexamethasone, in people who have received at least three prior medicines to treat multiple myeloma. Superimposed text: Drug Y is used to treat multiple myeloma in combination with dexamethasone, in people who have received at least three prior medicines to treat multiple myeloma.	Audio: Drug Y is used to treat multiple myeloma. Superimposed text: Drug Y is used to treat multiple myeloma.

Note. Study 2 will use the overall survival ad from Study 1.

FDA estimates the burden of this collection of information as follows:

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Cognitive Interview screener	30	1	30	0.08 (5 minutes)	2.4
Cognitive Interviews	18	1	18	1 (60 minutes)	18
Pretests 1 and 2 screener	200	1	200	0.08 (5 minutes)	16
Pretests 1 and 2	120	1	120	0.33 (20 minutes)	39.6
Study 1 screener	1,167	1	1,167	0.08 (5 minutes)	93.36
Study 1	700	1	700	0.33 (20 minutes)	231
Study 2 screener	867	1	867	0.08 (5 minutes)	69.36
Study 2	520	1	520	0.33 (20 minutes)	171.6
Total					641.32

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references are on display with the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; these are not available electronically at *https://www.regulations.gov* as these references are copyright protected. Some may be available at the website address, if listed. 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. Kim, J., J. Gao, L. Amiri-Kordestani, et al., ''Patient-Friendly Language to Facilitate Treatment Choice for Patients with Cancer.'' The Oncologist, 10.1634/theoncologist.2018-0761, 2019. Available from: *http://theoncologist.alphamedpress.org/content/early/2019/05/16/theoncologist.2018-0761.short?rss=1*.
2. Aikin, K.J., A.C. O'Donoghue, C.M. Squire, et al., ''An Empirical Examination of the FDAAA-Mandated Toll-Free Statement for Consumer Reporting of Side Effects in Direct-to-Consumer Television Advertisements.'' *Journal of Public Policy & Marketing,* 35(1):108–123, 2016.
3. Sullivan, H.W., V. Boudewyns, A.C. O'Donoghue, et al., ''Attention to and Distraction from Risk Information in Prescription Drug Advertising: An Eye-Tracking Study.'' *Journal of Public Policy & Marketing,* 36(2):236–245, 2017.

Dated: June 14, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–13128 Filed 6–20–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0021]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substances Generally Recognized as Safe: Notification Procedure

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 July 22, 2019.

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 0910–0342. Also include the FDA docket number found in brackets in the heading of this document.

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: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Substances Generally Recognized as Safe (GRAS): Notification Procedure—21 CFR Part 170, Subpart E and 21 CFR Part 570, Subpart E

OMB Control Number 0910–0342—Extension

The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that all food additives (as defined by section 201(s) (21 U.S.C. 321(s)) be approved by FDA before they are marketed. Section 409 of the FD&C Act (21 U.S.C. 349) establishes a premarket approval requirement for ''food additives.'' Section 201(s) of the FD&C Act provides an exclusion to the definition of food additive and thus from the premarket approval requirement, for uses of substances that are GRAS by qualified experts. The GRAS provision of section 201(s) of the FD&C Act is implemented in (part 170) 21 CFR part 170 and (part 570) 21 CFR part 570 for human food and animal food, respectively. Part 170, subpart E and part 570, subpart E provide a standard format for the submission of a notice. This collection utilizes a voluntary administrative procedure for notifying FDA about a conclusion that a substance is GRAS under the conditions of its intended use in human food or animal food. The information submitted to us in a GRAS notice is necessary to allow us to administer efficiently the FD&C Act's various provisions that apply to the use of substances added to food, specifically with regard to whether a substance is GRAS under the conditions of its intended use or is a food additive subject to premarket review. We use the information collected through the GRAS notification procedures to complete our evaluation within specific timelines.

Description of Respondents: The respondents to this collection of information are manufacturers of substances used in human food and animal food and feed.

In the **Federal Register** of March 12, 2019 (84 FR 8876), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received. We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
GRAS notification procedure for human food; 170.210–170.280 (part 170, subpart E)	100	1	100	170	17,000
GRAS notification procedure for animal food and animal feed; 570.210–570.280 (part 570, subpart E)	25	1	25	170	4,250
Total			75		21,250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden reflects an overall increase of 8,500 hours, which corresponds to an increase in GRAS submissions for human food from 50 to 100 we have received over the last 2 years.

Dated: June 17, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–13220 Filed 6–20–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: Small Rural Hospital Transition Project (SRHT), OMB No. 0906–0026—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than August 20, 2019.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Small Rural Hospital Transition Project (SRHT), OMB No. 0906–0026—Extension.

Abstract: Under Section 330A of the Public Health Service Act (42 U.S.C. 254c), the Federal Office of Rural Health Policy (FORHP) funds grant programs supporting expanding access to, coordinating, restraining the cost of, and improving the quality of essential health care services in rural and frontier communities. Small rural hospitals are facing many challenges in the new health care environment including the concurrent need to better measure and account for quality of care in all settings, improve transitions of care as patients move from one care setting to another, the evolution of new payment approaches such as value-based purchasing, and new approaches to care delivery such as accountable care organizations (ACO) and patient-centered medical homes. Success in this new environment will require bridging the gaps between the current system and the newly emerging system of healthcare delivery and payment. Because little is known about how these new models might impact rural communities, there is a need to help hospitals understand and consider those factors that would make them logical participants in health care systems that focus on quality, rather than the quantity of care provided to patients. The Small Rural Hospital Transition (SRHT), also funded by Section 330A, assists small rural hospitals facing these challenges. The purpose of the project is to provide on-site technical assistance to nine small rural hospitals residing in persistent poverty counties. Technical assistance is provided in the areas of: (1) Conducting financial assessments, (2) creating a quality-focused environment, (3) aligning services to community need, and (4) to the extent that financial and quality core areas have been stabilized, providing assistance to help recipients of technical assistance consider factors that would make them logical participants in health care systems that focus on value (*e.g.,* ACOs, shared savings programs, and primary care medical homes).

Need and Proposed Use of the Information: This information collection request consists of two forms: The SRHT Online Application and the Assessment. The application form is designed to solicit information that will be scored and ranked to aid in the selection of nine small rural hospitals to receive on-site technical assistance. The assessment determines applicant capacity in specific key areas leading to performance excellence across the organization (*e.g.,* leadership, strategic planning, operations, and processes).

Likely Respondents: The likely respondents are small rural hospitals located in a rural community. Hospitals must be (1) rural, as defined by FORHP and reside in a persistent poverty county or (2) reside in the rural census tract of a metro county (non-rural county) that is also a persistent poverty county and have 49 staffed beds or less as reported on the hospital's most recently filed Medicare Cost Report. Hospitals may be for-profit or not-for-profit.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total
SRHT Online Application	30	1	30	.50	15.0
Assessment: Performance Excellence for Rural Hospitals	30	1	30	.25	7.5
Total	*30		60		22.5

*The same individuals complete the SRHT Online Application and the Assessment for a total of 30 respondents.

HRSA specifically requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–13195 Filed 6–20–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Solicitation of Nominations for Membership To Serve on the Advisory Committee on Organ Transplantation

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Request for nominations.

SUMMARY: HRSA is seeking nominations of qualified candidates to be considered for appointment as members of the Advisory Committee on Organ Transplantation (ACOT). ACOT shall: (1) Advise the Secretary, acting through the HRSA Administrator, on all aspects of organ donation, procurement, allocation, and transplantation, and on such other matters that the Secretary determines; (2) advise the Secretary on federal efforts to maximize the number of deceased donor organs made available for transplantation and to support the safety of living organ donation; (3) at the request of the Secretary, review significant proposed Organ Procurement and Transplantation Network (OPTN) policies submitted for the Secretary's approval to recommend whether they should be made enforceable; and (4) provide expert input to the Secretary on the latest advances in the science of

transplantation, the OPTN's system of collecting, disseminating, and ensuring the validity, accuracy, timeliness, and usefulness of data, and additional medical, public health, patient safety, ethical, legal, financial coverage, social science, and socioeconomic issues that are relevant to transplantation.

Authority: As provided by 42 CFR 121.12, the Secretary established ACOT. ACOT is governed by the Federal Advisory Committee Act (FACA; 5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

DATES: Written nominations for membership on the ACOT will be received continuously.

ADDRESSES: Nomination packages must be submitted to the Executive Secretary, ACOT, Healthcare Systems Bureau, HRSA, Room 08W60, 5600 Fishers Lane, Rockville, Maryland 20857. Federal Express, Airborne, UPS, etc., mail delivery should be addressed to Executive Secretary, Advisory Committee on Organ Transplantation, Healthcare Systems Bureau, HRSA, at the above address, or sent via email to: *ACOTHRSA@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Walsh, Executive Secretary, ACOT, at (301) 443–6839 or email *rwalsh@hrsa.gov.* A copy of the ACOT charter and list of current membership may be accessed through the ACOT website at *https://www.organdonor.gov/about-dot/acot.html.*

SUPPLEMENTARY INFORMATION: ACOT was established by the Amended Final Rule of the Organ Procurement and Transplantation Network (OPTN) (42 CFR part 121) and, by Public Law 92–463, was chartered on September 1, 2000. ACOT meets up to three times during the fiscal year.

Nominations: HRSA is requesting nominations for voting members to serve as Special Government Employees (SGEs) on ACOT. The Secretary appoints ACOT SGEs with the expertise needed to fulfill the duties of the committee. HRSA is seeking nominees knowledgeable in such fields as deceased and living organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics, and statistics. HRSA is also seeking transplant candidates, transplant recipients, living organ donors, and family members of deceased and living organ donors to serve as members. SGEs shall not serve while they are also serving on the OPTN Board of Directors. Interested applicants may self-nominate or be nominated by another individual or organization.

Individuals selected for appointment to ACOT will be invited to serve for up-to 4 years. Members appointed as SGEs receive a stipend and reimbursement for per diem and travel expenses incurred for attending ACOT meetings and/or conducting other business on behalf of ACOT, as authorized by 5 U.S.C. 5703 of the Federal Travel Regulation for persons employed intermittently in government service.

The following information must be included in the package of materials submitted for each individual being nominated for consideration: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of ACOT), and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee; (3) the name, address, daytime telephone number, and email address at which the nominator can be contacted; and (4) a current copy of the nominee's curriculum vitae. Nomination packages may be submitted directly by the individual being nominated or by the person/organization recommending the candidate.

HRSA will try to ensure that ACOT membership of is balanced in terms of points of view represented. Accordingly, the Agency will consider for membership individuals from broad and diverse backgrounds, representing various geographic areas, gender, ethnic, and minority groups, as well as individuals with disabilities. Appointments shall be made without discrimination on the basis of age, ethnicity, gender, sexual orientation, or cultural, religious, or socioeconomic status.

Individuals selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is required for HRSA ethics officials to determine whether there is a conflict between the SGE's public duties as a member of ACOT and their private interests, including an appearance of a loss of impartiality as defined by federal laws and regulations, and to identify any required remedial action needed to address the potential conflict.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–13213 Filed 6–20–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; Matching Program

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE), is providing notice of a re-established matching program between HHS/ACF/OCSE and state agencies administering the Supplemental Nutrition Assistance Program (SNAP). The matching program compares state SNAP agency records with new hire, quarterly wage, and unemployment insurance information maintained in the National Directory of New Hires (NDNH). The outcomes of the comparisons help state agencies with establishing or verifying eligibility for applicants and recipients of SNAP benefits; reducing SNAP benefit errors; and, maintaining program integrity.

DATES: The deadline for comments on this notice is July 22, 2019. The re-established matching program will commence not sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months (from approximately August 16, 2019 through February 15, 2021) and, within three months of expiration, may be renewed for one additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the agreement.

ADDRESSES: Interested parties may submit written comments on this notice to Linda Boyer, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, by email at *linda.boyer@acf.hhs.gov,* or by mail at Mary E. Switzer Building, 330 C St. SW, 5th Floor, Washington, DC 20201. Comments received will be available for public inspection at this address from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: General questions about the matching program may be submitted to Linda Boyer, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, by email at *linda.boyer@acf.hhs.gov,* or by mail at Mary E. Switzer Building, 330 C St. SW, 5th Floor, Washington, DC 20201 or by telephone at 202–401–5410.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a), provides certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records, which contains information about individuals that are retrieved by name or other personal identifier, are matched with records of other federal, state, or local government records. The Privacy Act requires agencies involved in a matching program to:

1. Obtain approval of a Computer Matching Agreement, prepared in accordance with the Privacy Act, by the Data Integrity Board of any federal agency participating in a matching program.

2. Enter into a written Computer Matching Agreement

3. Provide a report of the matching program to Congress and the Office of Management and Budget (OMB), and make it available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).

4. Publish a notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12) after OMB and Congress complete their review of the report, as provided by OMB Circular A–108,

5. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

6. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

This matching program meets these requirements.

Dated: June 17, 2019.

Scott M. Lekan,

Commissioner, OCSE.

Participating Agencies

The Office of Child Support Enforcement (OCSE) is the source agency, and state agencies administering the Supplemental Nutrition Assistance Program (SNAP) are non-federal (recipient) agencies.

Authority for Conducting the Matching Program

The authority for conducting the matching program is contained in section 453(j)(10) of the Social Security Act (42 U.S.C. 653(j)(10)). The Agriculture Act of 2014, Public Law 113–079, amended section 11(e) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020(e)(24)) by adding the requirement that the state agency shall request wage data directly from the National Directory of New Hires established under section 453(i) of the Social Security Act (42 U.S.C. 653(i)) relevant to determining eligibility to receive supplemental nutrition assistance program benefits and determining the correct amount of those benefits at the time of certification.

Purpose(s)

The purpose of the matching program is to provide each participating state agency administering SNAP with new hire, quarterly wage, and unemployment insurance information from OCSE's National Directory of New Hires (NDNH) system of records to assist them in establishing or verifying SNAP applicants' and recipients' eligibility for assistance, reducing payment errors, and maintaining program integrity, including determining whether duplicate participation exists or if the applicant or recipient resides in another state. The state SNAP agencies may also use the NDNH information for the secondary purpose of updating the recipients' reported participation in work activities and updating recipients' and their employers' contact information maintained by the state SNAP agencies.

Categories of Individuals

The categories of individuals involved in the matching program are adult members of households who have applied for or receive SNAP benefits.

Categories of Records

The categories of records involved in the matching program, which may include personal identifiers, are new hire, quarterly wage, and unemployment insurance information. The specific data elements that will be provided to HHS/ACF/OCSE in a state agency input file are:

- Submitting state code (2-digit Federal Information Processing Standard code)
- Date stamp (input file transmission date)
- Adult SNAP caseload month and year of adult SNAP applicants and recipients
- Adult SNAP applicant/recipient Social Security number
- Adult SNAP applicant/recipient's first, middle, and last name
- Name/Social Security number verification request

Optional:

- Passback data (state agency information used to identify individuals within the input file to be returned on the output file)
- Same state data indicator (indicates whether the state agency requests NDNH new hire, quarterly wage, or unemployment insurance even if the information was provided by that same state)

HHS/ACF/OCSE will compare the Social Security numbers in the state agency input file to the Social Security numbers in the NDNH, and will provide the state agency with any available new hire, quarterly wage, and available unemployment insurance information in NDNH pertaining to the individuals whose records are contained in the state agency input file. The NDNH data elements that HHS/ACF/OCSE will return to the state agency are as follows:

a. New Hire File

- New hire processed date
- Employee name and address
- Employee date and state of hire
- Federal and state employer identification numbers
- Department of Defense code
- Employer name and address
- Transmitter agency code
- Transmitter state code
- Transmitter state or agency name

b. Quarterly Wage File

- Quarterly wage processed date
- Employee name
- Federal and state employer identification numbers
- Department of Defense code
- Employer name and address
- Employee wage amount
- Quarterly wage reporting period
- Transmitter agency code
- Transmitter state code
- Transmitter state or agency name

c. Unemployment Insurance File

- Unemployment insurance processed date

- Claimant name and address
- Claimant benefit amount
- Unemployment insurance reporting period
- Transmitter state code
- Transmitter state or agency name

System(s) of Records

The NDNH data used in this matching program will be disclosed from the following OCSE system of records, as authorized by routine use 15: ''OCSE National Directory of New Hires,'' no. 09–80–0381, last published in full at 80 FR 17906 (Apr. 2, 2015) and partially updated at 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2019–13242 Filed 6–20–19; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Microbiome and Aging ZAG1 ZIJ–8 (O2).

Date: July 8, 2019.

Time: 10:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 17, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–13167 Filed 6–20–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Cooperative Agreements for Traceback Testing.

Date: July 16, 2019.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NCI Shady Grove, 9609 Medical Center Drive, Room 7W112, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W112 Bethesda, MD 20892–9750, 240–276–5864, *Jennifer.schiltz@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: July 25, 2019.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NCI Shady Grove, 9609 Medical Center Drive, Room 7W554, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Christopher L. Hatch, Ph.D., Chief, Program Coordination & Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W554, Bethesda, MD 20892–9750, 240–276–6454 *ch29v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 17, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–13168 Filed 6–20–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Silvio O. Conte Digestive Diseases Research Core Centers.

Date: July 22, 2019.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK National Institutes of Health, Room 7021, 6707 Democracy Boulevard, Bethesda, MD, 20892–5452 (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Clinical Centers Review.

Date: July 23, 2019.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542 (301) 594–8886 *sanoviche@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases, Special Emphasis Panel; NIDDK Phase II Clinical Trial SBIR.

Date: July 23, 2019.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK National Institutes of Health, Room 7021, 6707 Democracy Boulevard, Bethesda, MD 20892–5452 (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases, Special Emphasis Panel; PAR–18–108: NIDDK Exploratory Clinical Trials for Small Business (R44).
Date: July 24, 2019.
Time: 11:30 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD, 20892–5452 (301) 594–2242, *jerkinsa@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 17, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–13169 Filed 6–20–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, NIAAA Member Conflict Applications—Clinical & Treatment Services.
Date: July 15, 2019.
Time: 10:00 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2120, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anna Ghambaryan, M.D., Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2120, Bethesda, MD 20892, 301–443–4032, *anna.ghambaryan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 17, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–13171 Filed 6–20–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; O'Brien Urology Centers.
Date: July 10–11, 2019.
Time: 8:00 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road NW, Washington, DC 20008.
Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20817, (301) 496–9010, *hoffertj@niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Beta Cell Program Project.
Date: July 16, 2019.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK, Exploratory Clinical Trials for Small Business (R44 Clinical Trial Required).
Date: July 16, 2019.
Time: 12:00 p.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20817, (301) 496–9010, *hoffertj@niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK IBDGC Ancillary Studies.
Date: July 18, 2019.
Time: 11:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room

7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 17, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–13172 Filed 6–20–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will meet in person on Wednesday, July 31, 2019 and Thursday, August 1, 2019 in Arlington, VA. The meeting will be open to the public.

DATES: The TMAC will meet on Wednesday, July 31, 2019 from 8:45 a.m.–5 p.m. Eastern Daylight Time (EDT), and Thursday, August 1, 2019 from 8:45 a.m.–5 p.m. EDT. Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held at AECOM at 3101 Wilson Blvd., Ste 900, Arlington, VA 22201. Members of the public who wish to attend the meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attention: Michael Nakagaki) by 11 p.m. EDT on Tuesday, July 30, 2019. Members of the public must check in at the front desk of 3101 Wilson Boulevard, Arlington, Virginia 22201 and will be provided with an escort to the ninth floor; photo identification is required.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed below as soon as possible.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated meeting materials will be available at *www.fema.gov/TMAC* for review by Friday, July 26, 2019. Written comments to be considered by the committee at the time of the meeting must be submitted and received by Friday, July 26, 2019, identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address the email to: *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact information in the body of the email.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW, Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on Wednesday, July 31, 2019, from 4 p.m. to 4:30 p.m. EDT and again on Thursday, August 1, 2019, from 1 p.m. to 1:30 p.m. EDT. Speakers are requested to limit their comments to no more than three minutes. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on Friday, July 26, 2019.

FOR FURTHER INFORMATION CONTACT: Michael Nakagaki, Designated Federal Officer for the TMAC, FEMA, 400 C Street SW, Washington, DC 20024, telephone (202) 212–2148, and email *michael.nakagaki@fema.dhs.gov.* The TMAC website is: *http://www.fema.gov/TMAC.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App.

In accordance with the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5)(a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) A description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: During the two-day meeting, TMAC members will conduct a final review and discussion of the TMAC 2018 Annual Report and vote to submit to FEMA. Day 2 of the meeting will focus on tasking to the TMAC for 2019. The TMAC will also receive public input on the report recommendations and content; the recommendations and content will be posted to the FEMA TMAC site prior to the meeting to provide the public an opportunity to review the materials. The full agenda and related meeting materials will be posted for review by Friday, July 26, 2019 at *http://www.fema.gov/TMAC.*

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency.

[FR Doc. 2019–13170 Filed 6–20–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–N062; FF08ESMF00–FXES11140800000–190]

Joint Draft Environmental Impact Statement and Environmental Impact Report, Joint Draft Habitat Conservation Plan and Natural Community Conservation Plan; Placer County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a joint draft environmental impact statement and draft environmental impact report (draft EIS/EIR) under the National Environmental Policy Act of 1967, as amended. We also announce receipt of applications for an incidental take permit under the Endangered Species Act of 1973, as amended, and receipt of a draft habitat conservation plan and natural community conservation plan. The National Marine Fisheries Service and U.S. Army Corps of Engineers are cooperating agencies on the draft EIS/EIR.

DATES: *Submitting Comments:* To ensure consideration, written comments must be received by August 20, 2019.

Public Meetings: We will hold public meetings on the following dates:

1. Placer County Planning Commission, Thursday, August 1, 2019 at 6:00–8:00 p.m.
2. Lincoln City Hall, Thursday, August 15, 2019 at 6:00–8:00 p.m.

ADDRESSES: *Submitting Comments:* Please address written comments to Mike Thomas, Chief, Conservation Planning Division:

- By U.S. mail or hand-delivery at U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825; if you are hand-delivering your comments, please call (916) 414–6600 to make an appointment during regular business hours to deliver your comments; or
- By facsimile to (916) 414–6713.

Public Meetings: We will hold public meetings at the following locations:

1. Placer County Planning Commission, 3091 County Center Drive, Auburn, California 95603.
2. Lincoln City Hall, First Floor Community Room, 600 6th Street, Lincoln, California 95648.

Reviewing Documents: You may obtain electronic copies of the draft Western Placer County Habitat Conservation Plan and Natural Community Conservation Plan (draft plan) and draft EIS/EIR from the Sacramento Fish and Wildlife Office website at *http://www.fws.gov/sacramento.* Copies of these documents are also available for public inspection, by appointment, during regular business hours, at the following locations:

- Sacramento Fish and Wildlife Office (see address above, under *Submitting Comments*);
- City of Lincoln Planning Department, 600 5th Street, Lincoln, CA 95648;
- Lincoln Public Library, 485 Twelve Bridges Drive, Lincoln, CA 95648;
- Placer County Community Development Resource Agency, 3091 County Center Drive, Auburn, CA 95603; and
- Certain Placer County Library branch locations (350 Nevada Street, Auburn, CA 95603; 6475 Douglas Boulevard, Granite Bay, CA 95746; and 2215 Rippey Road, Penryn, CA 95650).

FOR FURTHER INFORMATION CONTACT: Stephanie Jentsch, Senior Wildlife Biologist, Conservation Planning Division, Sacramento Fish and Wildlife Office (see **ADDRESSES**), (916) 414–6600 (telephone). If you use a telecommunications device for the deaf, please call the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (FWS), along with the National Marine Fisheries Service (NMFS) and the U.S. Army Corps of Engineers (Corps), announce the availability of a joint draft environmental impact statement and draft environmental impact report (draft EIS/EIR), prepared pursuant to the National Environmental Policy Act of 1967, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6.

We also announce the receipt of applications from Placer County, the City of Lincoln, South Placer Regional Transportation Authority (SPRTA), Placer County Water Agency (PCWA), and the Placer County Authority (PCA) (collectively, applicants) for a 50-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). In support of the applications, the applicants prepared a draft habitat conservation plan and natural community conservation plan (draft plan) pursuant to section 10(a)(1)(B) of the ESA. The applicants are requesting the authorization of incidental take for 14 covered species that could result from activities covered under the draft plan.

Background Information

Section 9 of the ESA and Federal regulations (50 CFR part 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Regulations governing permits for endangered and threatened species are set forth at 50 CFR 17.22 and 17.32, respectively. For more about the Federal habitat conservation plan program, go to *http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf.* As cooperating agencies, NMFS may use the EIS analysis to support a decision as to whether to issue an ITP to the applicants, and the Corps may use the EIS analysis to support decisions made associated with implementing the Clean Water Act (33 U.S.C. 1251 *et seq.*).

Proposed Action Alternative

FWS and NMFS would issue ITPs to the applicants for a period of 50 years for certain covered activities (described below). The applicants have requested ITPs for 14 covered animal species (described below), of which 7 are listed as endangered or threatened under the ESA.

Plan Area

The geographic scope of the draft plan includes two plan areas. Plan Area A encompasses approximately 209,000 acres of the City of Lincoln and unincorporated lands in western Placer County and is the focus of the draft plan. Plan Area B includes additional specific areas in Placer and Sutter Counties that are not included in Plan Area A. Combined, Plan Areas A and B cover approximately 260,000 acres.

Covered Activities

The proposed ESA section 10 ITPs would allow take of 14 covered species resulting from certain covered activities in the proposed plan areas. The draft plan includes the following seven general categories of covered activities (collectively, covered activities):

1. Valley potential future growth.
2. Valley conservation and rural development.
3. Foothills potential future growth.
4. Foothills conservation and rural development.
5. Regional public programs.
6. In-stream programs.
7. Conservation programs.

Covered activities include urban and rural development, water management, conservation measures, facilities maintenance, and other actions. The first four categories encompass future growth and rural development in the valley and foothills in Plan Area A. The final three categories occur throughout the plan areas and are defined primarily by similar habitat features or programmatic objectives.

Covered Species

Covered species are those 14 species addressed in the draft plan for which conservation actions will be implemented and for which the applicants are seeking ITPs, and include certain species listed under the ESA, species listed under the California Endangered Species Act (CESA), and species that are not currently listed but that have the potential to become listed during the proposed 50-year permit term.

The following wildlife species federally listed as endangered are proposed to be covered by the draft plan under an ITP from the FWS: Conservancy fairy shrimp (*Branchinecta conservatio*) and vernal pool tadpole shrimp (*Lepidurus packardi*).

The following wildlife species federally listed as threatened are proposed to be covered by the draft plan under an ITP from the FWS: Giant garter snake (*Thamnophis gigas*), California red-legged frog (*Rana draytonii*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), and vernal pool fairy shrimp (*Branchinecta lynchi*).

The following wildlife species that are not federally listed are also proposed to be covered by the draft plan: Swainson's hawk (*Buteo swainsoni*), California black rail (*Laterallus jamaicensis coturniculus*), western burrowing owl (*Athene cunicularia hypugaea*), tricolored blackbird (*Agelaius tricolor*), western pond turtle (*Actinemys marmorata*), and foothill yellow-legged frog (*Rana boylii*).

Two species of fish are proposed to be covered by the draft plan under an ITP from NMFS: The Central Valley steelhead (distinct population segment; *Oncorhynchus mykiss irideus*), which is federally listed as threatened; and the Central Valley fall/late-fall run Chinook salmon (evolutionarily significant unit; *Oncorhynchus tshawytscha*), which is not listed.

Collectively, these 14 species comprise the covered species addressed by the draft plan. All species included on the ITPs would receive assurances under FWS' ''No Surprises'' regulations at 50 CFR 17.22(b)(5) and 17.32(b)(5) and NMFS ''No Surprises'' regulations at 50 CFR 222.307(g).

National Environmental Policy Act Compliance

The draft EIS/EIR was prepared to analyze the impacts of issuing ITPs based on the draft plan and to inform the public of the proposed action, alternatives, and associated impacts and to disclose any irreversible commitments of resources.

FWS and NMFS published a notice of intent (NOI) to prepare a joint environmental impact statement and environmental impact report in the **Federal Register** on March 7, 2005 (70 FR 11022). The NOI announced a 30-day public scoping period, during which the public was invited to provide written comments and attend three public scoping meetings that were held on March 15, 16, and 17, 2005.

No-Action Alternative

Under the no-action alternative, FWS and NMFS would not issue ITPs to the applicants, and the draft plan would not be implemented. Under this alternative, individual projects carried out by or approved by one or more of the applicants that may take federally listed species would result in project-level consultation with the FWS and NMFS pursuant to section 7 or section 10 of the ESA. Because the applicants and private developers would generate environmental documentation and comply with the ESA on a project-by-project basis, there would not be a comprehensive program to coordinate and standardize requirements under the ESA within the plan area.

Reduced Take/Reduced Fill Alternative

The reduced take/reduced fill alternative would include the same categories of covered activities as the proposed action alternative (see *Covered Activities* under Proposed Action Alternative, above); however, under this alternative, the Valley Potential Growth Area (A1) would reduce vernal pool complex land (including waters protected by the Clean Water Act) conversion by 1,250 acres (approximately 10 percent). To maintain similar levels of development as the proposed action alternative, more grasslands and agricultural types would be developed (about a 4-percent increase) to compensate. Other aspects of covered activities, covered species, plan implementation, and conservation measures would remain the same as the proposed action alternative under this alternative. There would be no changes to other areas within the plan area.

Reduced Permit Term Alternative

The reduced permit term alternative would include the same categories of covered activities, covered species, and plan area as the proposed action alternative under this alternative; however, under this alternative, the permit term would be 30 years instead of 50. Longer-term projects would not be covered under this alternative, which would result in lower levels of urban and suburban development within the reduced permit term. Because impacts on covered species would be about 40 percent lower, less funding would be available to implement conservation measures, and overall fewer conservation measures would be implemented to meet the issuance criteria (such as land acquisition, management, monitoring, and restoration actions).

Public Comments

We request data, comments, new information, or suggestions from other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice, the draft EIS/EIR, or the draft plan. We particularly seek comments on biological information concerning covered species, current or planned activities in the subject area, and identification of other environmental issues that should be considered in regard to the proposed development and permit action.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Comments and materials we receive will be available for public inspection by appointment, Monday through Friday from 8 a.m. to 4:30 p.m., at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can 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.

Next Steps

Issuance of an ITP is a Federal proposed action subject to compliance with NEPA. The FWS and NMFS will evaluate the application, associated documents, and any public comments we receive to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the ESA. If FWS and NMFS determine that those requirements are met, we will issue permits to the applicants for the incidental take of the covered species. Permit decisions will be made no sooner than 30 days after the publication of the notice of availability for the final plan, final EIS/EIR, and completion of the record of decision.

Authority

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations at 40 CFR part 1500 through 1508, as well as in compliance with section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations at 40 CFR 17.22.

Michael Fris,

Assistant Regional Director, U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2019–13390 Filed 6–20–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190 A2100DD/AAKC001030/ A0A501010.999900]

Confederated Tribes of the Chehalis Reservation Liquor Ordinance; Repeal and Replace

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Confederated Tribes of the Chehalis Reservation Liquor Ordinance. The Ordinance certifies the Confederated Tribes of the Chehalis Reservation's Liquor licensing laws to regulate and control the possession, sale, and consumption of liquor within the jurisdiction of the Confederated Tribes of the Chehalis Reservation. The Ordinance repeals and replaces the previous liquor control ordinance published in the **Federal Register** on July 17, 1995 (60 FR 36564), and any and all previous statutes.

DATES: This Ordinance takes effect June 21, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Norton, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232, Phone: (503) 231–6702; Fax: (503) 231–2201.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Confederated Tribes of the Chehalis Reservation adopted Resolution Number: 2019–025 (Liquor Control Ordinance) on February 26, 2019. The statute repeals and replaces the previous liquor control ordinance published in the **Federal Register** on July 13, 2010 (60 FR 36564).

Dated: June 6, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

Chapter 9.40

LIQUOR CONTROL

9.40.010 Public policy declared.

This Ordinance is authorized and approved pursuant to Article IV, Section 1 and Article V, Section 1(h) and 1(i) of the Constitution and Bylaws of the Confederated Tribes of the Chehalis Reservation.

This Tribal Liquor Control Ordinance shall be cited as the ''Chehalis Tribal Liquor Control Ordinance'' (the ''Ordinance''). Under the inherent sovereignty of the Confederated Tribes of the Chehalis Reservation (the ''Tribe''), this chapter shall be deemed an exercise of the Tribe's power for the protection of the welfare, health, peace, morals and safety of the members of the Tribe. It is further the Tribe's policy to assure that any transaction, manufacture, importation, distribution, sale or consumption involving an alcoholic beverage, while within the Tribe's jurisdiction, shall occur in strict compliance with this chapter, the laws of the United States and where applicable, the State of Washington.

9.40.020 Definitions.

The stated terms are defined as follows:

''Alcoholic beverage'' shall mean any intoxicating liquor, beer or any wine, as defined under the provisions of this chapter or other applicable law;

''Legal age'' shall mean the age requirements, as defined in CTC 9.40.080.

''Sale'' shall mean the serving of any contents of any bagged, bottled, boxed, canned or kegged alcoholic beverage by any means whatsoever for a consideration of currency exchange

9.40.030 General prohibition.

It shall be a violation of Tribal law to manufacture for sale, to sell, offer or keep for sale, possess, transport or conduct any transaction involving any alcoholic beverage except in compliance with the terms, conditions, limitations, and restrictions specified in this chapter

9.40.040 Tribal control of alcoholic beverages.

The Business Committee shall have the sole and exclusive right to authorize the manufacture of alcoholic beverages, including distilleries, breweries, wineries and cideries, within or importation of alcoholic beverages into the Chehalis Reservation and Indian Country over which the Chehalis Tribe has jurisdiction for sale or for the purpose of conducting transactions therewith, and no person or organization shall so manufacture such alcoholic beverages within or import any such alcoholic beverages into the Chehalis Reservation or Indian Country over which the Chehalis Tribe has jurisdiction unless authorized by the Business Committee to do so.

9.40.050 Community on-site sales.

The Business Committee shall establish and maintain within the Chehalis Reservation a casino, including full-service restaurant, deli and bar, all of which are located within the casino facility, which shall be authorized to store and sell alcoholic beverages in conjunction with the operation of the restaurant, deli and bar and in accordance with the provisions of this chapter. The Business Committee shall set the prices of alcoholic beverages sold.

9.40.060 State of Washington licenses and agreements.

The Tribe may negotiate an agreement and/or the licensee may obtain a State of Washington liquor license for any Tribally operated establishment that manufactures or sells alcoholic beverages or conducts transactions involving alcoholic beverages to the extent required by applicable law in order to allow the Tribe to manufacture, sell or otherwise conduct transactions involving alcoholic beverages on the Reservation or in Indian Country under its control.

9.40.070 Applicability of State law.

Except as may be otherwise authorized by agreement between the Tribe and the State of Washington, the Tribe and its agents shall act in conformity with Washington State laws regarding the sale of liquor to the extent required by applicable Federal law, including 18 U.S.C. Section 1161

9.40.080 Persons under 21 years of age—Restrictions.

The Tribe shall comply with the State of Washington's laws regarding restrictions on the sale of alcoholic beverages to persons under the age of 21 years in any Tribal establishment operating pursuant to the provisions of this chapter.

9.40.090 Restrictions on intoxicated persons.

No Tribally operated or licensed establishment shall sell, give, or furnish any alcoholic beverage or in any way allow any alcoholic beverage to be sold, given or furnished to a person who is obviously intoxicated.

9.40.100 Hours and days of sale.

Any Tribally operated or licensed establishment shall sell or furnish alcoholic beverages for on-site consumption only during hours or on days which are in compliance with applicable Washington State law

9.40.110 Power to license and tax.

The power to establish Tribal licenses and levy taxes under the provisions of this chapter is vested exclusively with the Tribe's Business Committee. If the Business Committee enters into any agreements with the State regarding the sale of liquor, the agreement shall be deemed to constitute Tribal Law

9.40.120 Tribally owned establishments.

The Business Committee can issue, by resolution, an appropriate license to a Tribally owned establishment upon determining the site for the establishment and obtaining the necessary licensing or agreement from the State of Washington.

9.40.130 Licensing.

A. The Business Committee shall have the power to issue licenses to any Tribal or State chartered corporation, individual or partnership or other entity to undertake any manufacture, sale or transaction of alcoholic beverages, including distilleries, breweries, wineries and cideries within the Chehalis Reservation or Indian Country over which the Chehalis Tribe has jurisdiction which the Tribe itself has the power to undertake under this chapter.

B. Applications for a license shall be submitted in the form prescribed by the Business Committee or its authorized employees. The Business Committee may, within its sole discretion and subject to the conditions in this chapter, issue or refuse to issue the license applied for upon payment of such fee as the Business Committee may prescribe.

C. Every license shall be issued in the name of the applicant and no license shall be transferable or assignable without the written approval of the Business Committee, nor shall the licensee allow any other person or entity to use the license.

D. The Business Committee may, for violations of this chapter, suspend or cancel any license. A license is a privilege and no person shall have vested rights therein. Prior to cancellation or suspension of a license, the Business Committee shall send notice of its intent to cancel or suspend the license to the licensee. A licensee whose liquor license is cancelled or suspended by the Business Committee shall be entitled to appeal the cancellation or suspension within 10 days of the receipt from the Business Committee of such notice by filing a notice of appeal with the Clerk of the Tribal Court. The appeal of any such notice shall be determined by the Tribal Court in accordance with the ordinances of the Tribe governing Tribal Court actions and the decision of the Tribal Court, including any appeal within the Tribal Court system, shall be final and binding on the parties.

E. No license issued under this chapter shall be valid for a period longer than one year.

9.40.140 Regulations.

The Business Committee may, consistent with this chapter, adopt regulations it deems necessary to implement this chapter.

9.40.150 Severability.

If any part of this Ordinance , or the application thereof to any party, person, or entity or to any circumstances, shall be held invalid for any reason whatsoever, the remainder of the section or Ordinance shall not be affected thereby, and shall remain in full force and effect as though no part thereof had been declared to be invalid.

9.40.160. Amendment or repeal of ordinance.

This chapter may be amended or repealed by a majority vote of the Business Committee. Any amendment to this Liquor Ordinance shall be published as required pursuant to Federal law.

9.40.170. Sovereign immunity.

Nothing in this Ordinance is intended, nor shall anything contained in it be construed, as a waiver of the sovereign immunity of the Confederated Tribes of the Chehalis Reservation.

9.40.180. Effective date.

The ordinance codified in this chapter shall be effective upon the date that the Secretary of the Interior certifies the ordinance codified in this chapter and publishes it in the **Federal Register**.

9.40.190 Jurisdiction, State and Tribal law.

Notwithstanding anything in this chapter to the contrary, nothing herein is intended, nor shall it be construed, as a grant of jurisdiction from the Confederated Tribes of the Chehalis Indian Reservation to the State of Washington beyond that provided by applicable law. The Tribe shall operate in conformity with State law and Tribal law to the extent provided pursuant to 18 U.S.C. Section 1161.

9.40.200 Tribal court jurisdiction.

Jurisdiction for all matters and actions under this Liquor Ordinance, including without limitation, challenges to any portion of this Ordinance and actions revoking any authority to do business on the Chehalis Reservation under this Ordinance, shall lie exclusively with the Chehalis Tribal Court.

9.40.210 Violations of this Ordinance and Any Promulgated Regulations.

Violations of this Ordinance and any promulgated regulations shall be civil violations subject to civil enforcement and penalties except where an individual or entity is either manufacturing, importing, selling or exporting products subject to this Ordinance without having received a liquor license as set forth herein, which such actions shall constitute criminal act(s).

A. Any individual or entity who shall be charged by the Tribe with a civil violation of this Ordinance and / or regulations promulgated under this Ordinance shall have the right to obtain a hearing challenging the claimed violation(s) and / or the penalties to be imposed before the Chehalis Tribal Court.

B. The civil charge shall be commenced by a writing / Notice from the Tribe signed by either the Department Director responsible for administering this Ordinance or the Chairman of the Tribe. The writing shall specify the violation(s), the Ordinance and / or regulations violated, the opportunity to cure, if any, within a specified timeframe, and the right to appeal.

C. Civil violations of this Ordinance and / or promulgated regulations shall be subject to the potential of cease and desist notices, injunctive relief, and / or fines of $500.00 and possible suspension of the license for 10 days for the first offense, $1,000.00 and automatic suspension for 30 days for the second offense, and, if the individual or entity is not a Chehalis Tribal member, license revocation and / or exclusion from the Reservation for any subsequent violation. If exclusion is not an option under the terms of this Ordinance, then for each violation after the second violation, the fine shall increase by $500.00 and / or license revocation.

D. The request for a hearing challenging the claimed violation(s) and / or penalties shall take the form of a pleading filed with the Tribal Court denominating the challenging party as plaintiff and the Tribe as defendant and the pleading and a summons shall be served under the Tribal Court rules upon the Chairman of the Tribe with a copy to the Office of Tribal Attorney.

E. In order to be heard by the Tribal Court, the aforementioned pleading must be filed and served within 30 days of the end of the period, if any, identified in the writing / Notice as the cure period. This timeframe constitutes a statute of limitation and shall not be tolled.

F. In hearing the appeal, the Chehalis Tribal Court shall follow its normal rules of procedure and the applicability of Chehalis Tribal Law and any other procedural requirements as specified in the Tribal Codes for the Court.

G. All decisions of the Chehalis Tribal Court are final and non-appealable.

H. The burden of proof in any civil proceeding shall be upon the Tribe which, in order to prevail, must be by a preponderance of the evidence.

I. Any allegation that an individual or entity has violated the criminal law with respect to this Ordinance shall be referred to the Tribal Prosecutor of the Tribe for review and if appropriate filing of a criminal complaint.

J. Should the Prosecutor determine to proceed, the Prosecutor shall file a criminal complaint against the Defendant and have the Defendant served.

K. The Tribe's Prosecutor and / or Chief of Police may refer an potential criminal violation to the US Attorney in Seattle provided that if the matter is referred, but the US Attorney shall decline to proceed, then the Prosecutor shall retain the jurisdiction to proceed.

L. All provisions of the Tribe's criminal codes shall apply to this proceeding except that all trials shall be bench trials.

M. Should an individual or entity be found guilty of criminal violations of this Ordinance, then, in the case of an individual, the individual shall be sentenced to not less than 6 months of jail time for a first offense and not less than 11 months and 25 days of jail time for each subsequent conviction. If an entity is found guilty of a criminal violation, then the sentence shall be exclusion from the Reservation.

N. Notwithstanding anything herein to the contrary, a defendant in a criminal matter may appeal any conviction to the Chehalis Court of Appeals pursuant to the rules of the Tribe's Code governing such appeals.

O. Any individual or entity violating the criminal provisions of this Ordinance shall be subject to the search and seizure provisions of the Tribe's criminal code permitting searches of any premises where there is good cause to believe that a criminal violation is occurring and seizure of any products or equipment involved in the alleged criminal violation(s).

P. Upon trial of a criminal charge, if the Defendant is found guilty, any products or equipment shall be forfeited to the Tribe as part of any sentence.

[FR Doc. 2019–13264 Filed 6–20–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900 253G]

Kickapoo Traditional Tribe of Texas Liquor Ordinance; Repeal and Replace

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Kickapoo Traditional Tribe of Texas Liquor Ordinance which repeals and replaces the Kickapoo Traditional Tribe of Texas Beer and Liquor Tax Ordinance and any and all previous statutes.

The Kickapoo Traditional Tribe of Texas Liquor Ordinance regulates and controls the possession, sale, manufacture, and distribution of liquor on the Kickapoo Traditional Tribe of Texas trust lands in conformity with the Federal laws and of the State of Texas where applicable and necessary. The enactment of this Ordinance will provide and important source of tax revenue for the continued operation and strengthening the Kickapoo Traditional Tribes of Texas government and the delivery of Tribal government services and, the economic viability of Tribal enterprises. Although, the Kickapoo Traditional Tribe of Texas Liquor Ordinance was adopted on October 1, 2018, it does not become effective until published in the **Federal Register**.

DATES: This ordinance shall take effect on July 22, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Lovin, Tribal Government Officer, Southern Plains Regional Office, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005; telephone: (405) 247–1534 or (405) 247–6673, fax: (405) 247–9240.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian Country. On October 1, 2018, the Kickapoo Traditional Tribe of Texas Traditional Council duly adopted the Kickapoo Traditional Tribe of Texas Liquor Ordinance by Resolution 2018–058, which will repeal, upon its effective date, the Kickapoo Traditional Tribe of Texas Beer and Liquor Tax Ordinance, Resolution No. 2011–892, which was published in the **Federal Register** on February 22, 2012 (77 FR 10547).

This notice is published in accordance with the delegated authority by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Kickapoo Traditional Tribe of Texas Traditional Council duly adopted the Kickapoo Traditional Tribe of Texas Liquor Ordinance by Resolution No. 2018–058 on October 1, 2018.

Dated: May 17, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

Kickapoo Traditional Tribe of Texas Liquor Ordinance

Table of Contents

Section 1—INTRODUCTION

Section 1.1—Authority

This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. § 1161, by the authority of the Traditional Council enumerated in Article VII §§ (g), (h), (j), (k), and (n) of the Constitution of the Kickapoo Traditional Tribe of Texas (''KTTT'') to enact legislation and regulate activities of businesses operating on KTTT lands, and in conformity with applicable Texas State laws and all attendant agreements.

Section 1.2—Short Title

This ordinance shall be known as the ''KTTT Liquor Ordinance.''

Section 1.3—Definitions

(A) Indian Country—The term ''Indian Country'' means the definition provided in 18 U.S.C. § 1151.

(B) Liquor—The term ''Liquor'' shall mean any alcoholic beverage including but not limited to any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever.

(C) KTTT—The term ''KTTT'' means the Kickapoo Traditional Tribe of Texas.

(D) KTTT Lands—The term ''KTTT Lands'' means the Tribe's reservation, trust lands, and all other lands as defined in 18 U.S.C. § 1151.

(E) State—The term ''State'' means the State of Texas.

(F) Traditional Council—The term ''Traditional Council'' means the governing body of the Kickapoo Traditional Tribe of Texas, in accordance with the provisions of the KTTT Constitution.

(G) Tribe—The term ''Tribe'' means the Kickapoo Traditional Tribe of Texas.

Section 1.4—Purpose

The purpose of this ordinance is to regulate and control the possession, sale, manufacture, and distribution of liquor within the KTTT's reservation, trust lands, and all Indian Country as defined in 18 U.S.C. § 1151, in order to permit liquor sales by tribally-owned and operated enterprises and lessees and at other tribally-approved special events. The enactment of the KTTT Liquor Ordinance will increase the ability of the KTTT to control the manufacture, distribution, sale, and possession of liquor on the Tribe's lands and will provide an important source of tax revenue for the continued operation and strengthening of the KTTT government, the delivery of tribal governmental services, and the economic viability of tribal enterprises.

Section 1.5—Jurisdiction

The KTTT Liquor Ordinance shall apply to all lands now or in the future under the governmental authority of the KTTT, including the Tribe's reservation, trust lands, and Indian Country as defined under 18 U.S.C. § 1151.

Section 1.6—Application of 18 U.S.C. § 1161

By adopting the KTTT Liquor Ordinance, the Tribe hereby regulates the sale, manufacturing, distribution, possession, and consumption of liquor while ensuring that such activity conforms with applicable laws of the State of Texas as required by 18 U.S.C. § 1161 and the United States.

Section 1.7—Declaration of Public Policy & Findings

The Traditional Council enacts this KTTT Liquor Ordinance based on the following findings:

(A) The manufacture, distribution, possession, sale, and consumption of liquor within KTTT Lands are matters of special concern to the Tribe and the Traditional Council.

(B) Federal law currently prohibits the introduction of liquor into or the manufacture of liquor in Indian Country, except as provided in 18 U.S.C. § 1161, except in accordance with State law and the duly enacted law of the Tribe.

(C) The KTTT believes that it should regulate and control liquor transactions within its lands because of the many potential problems associated with the unregulated or inadequately regulated manufacture, distribution, sale, possession, and consumption of liquor. The Traditional Council finds that tribal control and regulation of liquor is necessary to protect the health and welfare of KTTT tribal citizens, to address specific concerns relating to liquor use, and to achieve maximum economic benefit to the Tribe.

(D) It is in the best interests of the Tribe to enact this KTTT Liquor

Ordinance to govern liquor transactions on its lands.

Section 2—LIQUOR SALES, POSSESSION, AND MANUFACTURE

Section 2.1—Possession

The introduction and possession of liquor shall be lawful within KTTT Lands, provided that such introduction or possession is in conformity with the laws of the Tribe and the applicable laws of the State.

Section 2.2—Retail Sales

The sale of liquor shall be lawful within KTTT Lands, provided that such sales are in conformity with the laws of the Tribe and the applicable laws of the State.

Section 2.3—Manufacture

The manufacture of liquor shall be lawful within KTTT Lands, provided that such manufacture is in conformity with the laws of the Tribe and the applicable laws of the State.

Section 2.4—Age Limits

The legal age for possession or consumption of liquor within KTTT Lands shall be the same as that of the State, which is currently 21 years. No person under the age of 21 years of age shall purchase, possess, or consume any liquor.

Section 3—LICENSING

Section 3.1—Licensing

The Traditional Council shall have the power to establish procedures and standards for tribal licensing of liquor manufacture, distribution, and sale within KTTT Lands, including setting of a license fee schedule, and shall have the power to publish and enforce such standards. For license applicants that are not tribally-owned, no tribal license shall be issued except upon showing of satisfactory proof that the applicant is duly licensed by the State. The fact that an applicant for a tribal license possesses a license issued by the State shall not provide the applicant with an entitlement or expectation to a tribal license.

Section 4—ENFORCEMENT

Section 4.1—Enforcement

(A) The Traditional Council shall have the power to develop, enact, promulgate, and enforce regulations as necessary for the enforcement of the KTTT Liquor Ordinance and to protect the public health, welfare, and safety of the Tribe, provided that all such regulations conform to and do not conflict with any applicable KTTT, Federal, or State law. Regulations enacted pursuant to the KTTT Liquor Ordinance may include provisions for suspension or revocation of KTTT liquor licenses, reasonable search and seizure provisions, and civil and criminal penalties for violations of the KTTT Liquor Ordinance to the full extent permitted by Federal law and consistent with due process.

(B) KTTT law enforcement personnel, and security personnel duly authorized by the Traditional Council, shall have the authority to enforce the KTTT Liquor Ordinance by confiscating any liquor sold, possessed, distributed, manufactured, or introduced within KTTT Lands in violation of the KTTT Liquor Ordinance or of any regulations duly adopted pursuant to the KTTT Liquor Ordinance.

(C) The Tribal Council shall have the exclusive jurisdiction to hold hearings on violations of the KTTT Liquor Ordinance and any procedures or regulations adopted pursuant to the KTTT Liquor Ordinance; to promulgate appropriate procedures governing such hearings; to determine and enforce penalties or damages for violations of the KTTT Liquor Ordinance; and to delegate to a subordinate hearing officer or panel or to the KTTT Tribal Court the authority to take any or all of the foregoing actions on its behalf.

Section 5—TAXATION

Section 5.1—Taxation

The KTTT retains the sovereign authority to tax liquor within KTTT Lands by appropriate statute. Nothing contained in in the KTTT Liquor Ordinance is intended to, nor does it in any way, limit or restrict the Tribe's ability to impose any tax upon the sale or consumption of liquor.

Section 6—MISCELLANEOUS PROVISIONS

Section 6.1—Sovereign Immunity Preserved

Nothing contained in the KTTT Liquor Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the KTTT or any of its agencies, agents, or officials from uncontested suit or action of any kind.

Section 6.2—Conformance with Applicable Laws

All acts and transactions under the KTTT Liquor Ordinance shall be in conformity with the laws of the Tribe and the laws of the State to the extent required by 18 U.S.C. § 1161 and with all Federal laws regarding liquor in Indian Country.

Section 6.3—Effective Date

The KTTT Liquor Ordinance shall be effective as of the date on which the Secretary of the Interior certifies it and publishes the same in the **Federal Register**.

Section 6.4—Repeal of Prior Acts

All prior enactments of the Traditional Council, including tribal resolutions, policies, regulations, or statues pertaining to the subject matter set forth in the KTTT Liquor Ordinance are hereby rescinded. Specifically, the KTTT Beer and Liquor Tax Ordinance, Resolution No. 2011-982 (Mar. 30, 2011) approved by the Secretary of the Interior on February 9, 2012 (77 Fed. Reg. 10548) is repealed.

Section 6.5—Amendments

The KTTT Liquor Ordinance may only be amended pursuant to an amendment duly enacted by the Traditional Council and certification by the Secretary of the Interior and publication in the **Federal Register**, if required.

Section 6.6—Severability and Savings Clause

If any part or provision of the KTTT Liquor Ordinance is held invalid, void, or unenforceable by a court of competent jurisdiction, such adjudication shall not be held to render such provisions inapplicable to other persons or circumstances. Further, the remainder of the KTTT Liquor Ordinance shall not be affected and shall continue to remain in full force and effect.

[FR Doc. 2019–13263 Filed 6–20–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A51010.999900]

Land Acquisitions; the Delaware Tribe of Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Principal Deputy Assistant Secretary—Indian Affairs has made a final determination to acquire 3.133 acres, more or less, into trust for the Delaware Tribe of Indians on June 6, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS–4624–

MIB, Washington, DC 20240, telephone (505) 563–3132.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual, and is published to comply with the requirement of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly published in the **Federal Register**.

On June 6, 2019, the Principal Deputy Assistant Secretary—Indian Affairs issued a decision to accept land in trust for the Delaware Tribe of Indians under the authority of Section 5 of the Indian Reorganization Act of 1934 (25 U.S.C. 5108).

Legal Description

A tract of land located in a portion of the S½SW¼NE¼NE¼ of Section 13, Township 35 South, Range 13 East of the 6th Principal Meridian, City of Caney, Montgomery County, Kansas; more particularly described as follows: Commencing at the East Quarter Corner of Section 13; thence N 89°37′03″ W, along the South line of the SE¼NE¼, a distance of 1,297.83 feet to the Southwest corner thereof; thence N 00°38′28″ W, along the West line of the SE¼NE¼, a distance of 1,333.20 feet to the Northwest corner thereof; thence S 89°06′35″ E, along the South line of the NE¼NE¼, a distance of 30.01 feet, to the East Right of Way Line of High Street, for the True Point of Beginning: Thence N 00°29′47″ W, along said East Right of Way Line of High Street, a distance of 328.07 feet to the North line of the S½SW¼NE¼NE¼ of Section 13; thence S 89°11′40″ E, along said North line, a distance of 420.34 feet; thence S 01°07′05″ W, a distance of 328.58 feet to the South line of the NE¼NE¼; thence N 89°06′35″ W, along said South line, a distance of 411.09 feet to the Point of Beginning and containing 3.133 acres, more or less. Surface only.

Dated: June 6, 2019.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2019–13262 Filed 6–20–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–ES–2019–N078; FVHC98220410150–XXX–FF04H00000]

Deepwater Horizon Oil Spill Natural Resource Damage Assessment, Florida Trustee Implementation Group Phase V.3 Florida Coastal Access Project: Draft Restoration Plan and Supplemental Environmental Assessment

AGENCY: Department of the Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA), the *Deepwater Horizon* Oil Spill Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), Record of Decision, and Consent Decree, the Federal and State natural resource trustee agencies for the Florida Trustee Implementation Group (FL TIG) have prepared a *Phase V.3 Florida Coastal Access Project: Draft Restoration Plan and Supplemental Environmental Assessment* (Phase V.3 RP/SEA). The FL TIG is proposing a third phase of the Florida Coastal Access Project, including the acquisition of a coastal inholding parcel within the Navarre Beach Marine Park in Santa Rosa County, Florida, as the preferred alternative. This would continue the process of restoring lost recreational use in the Florida Restoration Area resulting from the *Deepwater Horizon* (DWH) oil spill. We invite comments on the draft Phase V.3 RP/SEA.

DATES:

Submitting Comments: We will consider public comments on the draft Phase V.3 RP/SEA received on or before July 22, 2019.

Public Meeting: The FL TIG will host a public meeting on July 18, 2019, at the Navarre Beach Marine Science Station, 8638 Blue Heron Court, Navarre, FL. An open house will begin at 5:30 p.m., followed by the public meeting from 6 to 7:30 p.m.

ADDRESSES: *Obtaining Documents:* You may download the draft Phase V.3 RP/SEA from any of the following websites:

- *http://www.doi.gov/deepwaterhorizon/adminrecord*
- *http://www.gulfspillrestoration.noaa.gov/restoration-areas/florida*
- *http://dep.state.fl.us/deepwaterhorizon/default.htm*

Alternatively, you may request a CD of the draft Phase V.3 RP/SEA (see **FOR FURTHER INFORMATION CONTACT**). A copy of the Phase V.3 RP/SEA is also available for review at the Santa Rosa County Public Library.

Submitting Comments: You may submit comments on the draft Phase V.3 RP/SEA by one of the following methods:

- *Via the Web: http://www.gulfspillrestoration.noaa.gov/restoration-areas/florida.*
- *Via U.S. Mail:* U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, GA 30345. In order to be considered, mailed comments must be postmarked on or before the comment deadline given in **DATES**.
- *In Person:* Verbal comments may be provided at the public meeting in Navarre, Florida, on July 18, 2019.

FOR FURTHER INFORMATION CONTACT: Nanciann Regalado, via email at *nanciann_regalado@fws.gov*, via telephone at 678–296–6805, or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

The Florida Coastal Access Project was selected for funding and implementation in Phase V of DWH early restoration. In the 2011 *Framework Agreement for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill* (Framework Agreement), BP agreed to provide to the Trustees up to $1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the DWH oil spill. The Framework Agreement represented a preliminary step toward the restoration of injured natural resources and was intended to expedite the start of restoration in the Gulf in advance of the completion of the injury assessment process. In the five phases of the early restoration process, the Trustees selected, and BP agreed to fund, a total of 65 early restoration projects expected to cost a total of approximately $877 million, including the Florida Coastal Access Project for approximately $45.4 million. The Trustees selected these projects after public notice, public meetings, and consideration of public comments.

The Consent Decree, as discussed in the ‘‘Background’’ section below, terminated and replaced the Framework Agreement and provided that the Trustees shall use remaining early restoration funds as specified in the early restoration plans and in accordance with the Consent Decree. The Trustees have determined that decisions concerning any unexpended early restoration funds are to be made by the appropriate TIG, in this case the FL TIG.

Background

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Trustees conducted the natural resource damage assessment (NRDA) for the *Deepwater Horizon* oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the completion of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred).

The *Deepwater Horizon* trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

The Trustees reached and finalized a settlement of their natural resource damage claims with BP in an April 4, 2016, Consent Decree approved by the U.S. District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Florida Restoration Area are now chosen and managed by the FL TIG. The FL TIG is composed of the following six Trustees: State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; DOI; NOAA; EPA; and USDA.

Overview of the FL TIG Draft Phase V.3 RP/SEA

The draft Phase V.3 RP/SEA is being released in accordance with OPA NRDA regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, NEPA and its implementing regulations found at 40 CFR parts 1500–1508, the Final PDARP/PEIS, and the Consent Decree. The Phase V.3 RP/SEA provides an OPA analysis for the proposed third phase of the Florida Coastal Access Project and supplements the NEPA analysis completed in the first and second phases of the project (2016 Final Phase V Early Restoration Plan and Environmental Assessment and the 2017 Final Phase V.2 Restoration Plan and Supplemental Environmental Assessment, respectively). In the draft Phase V.3 RP/SEA, the FL TIG proposes the acquisition of the Navarre Beach Park Addition—an approximately 4.75-acre privately owned inholding parcel within the existing Navarre Beach Marine Park, a county park in Santa Rosa County—as the preferred alternative. The proposal consists of land acquisition only; construction of recreational amenities is not proposed. The parcel would become part of the Navarre Beach Marine Park and would be owned by Santa Rosa County, who would be responsible for maintaining it as part of the Santa Rosa County Park System. Deed restrictions would ensure the property remains in the Santa Rosa County Park System in perpetuity. Acquisition of the Navarre Beach Marine Park Addition would continue the process of restoring natural resources and services injured or lost as a result of the DWH oil spill. This would be accomplished using approximately $2 million in Florida Coastal Access Project remaining funds.

Next Steps

As described above, the Trustees will hold a public meeting to facilitate the public review and comment process. After the public comment period ends, the Trustees will consider and address the comments received before issuing a final Phase V.3 RP/SEA.

Public Availability of Comments

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 can 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.

Administrative Record

The documents comprising the Administrative Record for the Phase V.3 RP/SEA can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR parts 1500–1508.

Mary Josie Blanchard,

Director of Gulf of Mexico Restoration, Department of the Interior.

[FR Doc. 2019–13224 Filed 6–20–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X.LLID930000.L11100000.DF0000. LXSGPL000000.241A.4500132602]

Notice of Availability of the Draft Programmatic Environmental Impact Statement for Fuel Breaks in the Great Basin; Idaho, Washington, Oregon, California, Nevada, and Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land

Management (BLM) has prepared a Draft Programmatic Environmental Impact Statement (EIS) for Fuel Breaks in the Great Basin and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Draft Programmatic EIS for Fuel Breaks in the Great Basin within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Draft Programmatic EIS for Fuel Breaks in the Great Basin by any of the following methods: *website: https://go.usa.gov/xnQcG, Email: GRSG_PEIS@blm.gov, Fax:* 208–373–3805, *Mail:* Bureau of Land Management, Idaho State Office, ATTN: Fuel Breaks Draft PEIS, 1387 South Vinnell Way, Boise ID 83709.

Copies of the Draft Programmatic EIS for Fuel Breaks in the Great Basin are available in the BLM Idaho State at the above address; additional copies can be made available at the California, Nevada, Oregon/Washington, and Utah State Offices upon request.

FOR FURTHER INFORMATION CONTACT: Marlo Draper, telephone 208–373–3812; address BLM Idaho State Office, 1387 South Vinnell Way, Boise ID 83709; email *mdraper@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose of a system of strategically placed fuel breaks in the Great Basin region is to slow the spread of wildfires and provide firefighters with the best opportunity to catch rapidly moving fires and establish an anchor point, thereby reducing wildfire size and improving firefighter safety while engaging in fire suppression. Fuel breaks would also offer greater protection of human life and property, sagebrush communities, and habitat restoration investments. Reducing fire size helps to reduce the expansion of invasive species, such as cheatgrass and medusahead. The need for fuel breaks relates to the increased size and frequency of wildfires throughout the western United States in recent years. The fires have impacted healthy rangelands, sagebrush communities, and the general productivity of the lands. Efforts to suppress these wildfires have cost approximately $1.7 billion dollars between 2007 and 2017. These wildfires have resulted in increased numbers of injuries and fatalities among wildland firefighters, destruction of private property, degradation and loss of rangelands, loss of recreational opportunities, and habitat loss for a variety of species, including the conversion of native habitats to invasive annual grasses. The conversion of rangeland habitats to invasive annual grasslands further impedes rangeland health and productivity by slowing or preventing the recovery of sagebrush ecosystems.

The preferred alternative (Alternative D) would authorize a full suite of tools to construct approximately 11,000 miles of new fuel breaks within the 223,000,000-acre planning area. Impacts would include those to native plant communities that are currently resistant to invasive annual plants, but may become vulnerable through repeated fires. Potential tools would include manual, chemical, mechanical, prescribed fire, reseeding, and targeted grazing. Fuel break types would include green strips (areas planted with low-statured, fire-resistant vegetation), brown strips (areas where all vegetation is removed), mowed fuel breaks, and targeted grazing fuel breaks (where livestock grazing is managed to reduce vegetation).

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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 can 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.

Authority: 40 CFR 1506.6, 40 CFR 1506.10

John F. Ruhs,

Idaho State Director, Bureau of Land Management.

[FR Doc. 2019–13021 Filed 6–20–19; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000.L18200000. XZ0000. LXSS020H0000. 19X.HAG 19–0060]

Change of Hours of Operation for the Lakeview Interagency Office, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of change in office hours.

SUMMARY: The Lakeview Interagency Office, which includes the Bureau of Land Management Lakeview District Office and the Fremont-Winema National Forest Supervisor's Office, will implement new hours of operation, weekdays, excluding Federal holidays, from 8:00 a.m. to 4:30 p.m. The hours of operation for all other Lakeview BLM Offices will not change.

DATES: The new hours of operation take effect on July 1, 2019.

ADDRESSES: The Lakeview Interagency Office is located at 1301 S G St., Lakeview, OR 97630.

FOR FURTHER INFORMATION CONTACT: Seana Lammers, Administrative Officer, 1301 S G St., Lakeview, Oregon 97630; telephone: 541–947–6202; email: *seanamlammers@fs.fed.us.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This change is intended to better serve the public—based on a long-term review of calls received and the number of public visits between 7:45 and 8 a.m.—and to improve staffing efficiency.

(Authority: 43 CFR 1821.11)

Todd Forbes,

Lakeview District Manager.

[FR Doc. 2019–13088 Filed 6–20–19; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB0I000. L51100000.GN0000. LVEMF1402780 14X MO: 4500134784]

Notice of Availably of the Final Environmental Impact Statement for the Proposed Gemfield Mine Project, Esmeralda County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM), Tonopah Field Office, has prepared a Final Environmental Impact Statement (EIS) for the Gemfield Mine Project and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the Final EIS for the Gemfield Mine Project and other documents pertinent to this proposal may be examined at the Mount Lewis Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820 or at the Tonopah Field Office, 1553 South Main Street, Tonopah, Nevada 89049. The document is also available for download at *https://go.usa.gov/xE8q6.*

FOR FURTHER INFORMATION CONTACT: Kevin Hurrell, Project Manager; telephone: 775–635–4000; address: 50 Bastian Road, Battle Mountain, Nevada 89820; or email: *blm_nv_bmdo_mlfo_gemfieldeis@blm.gov.* Contact Mr. Hurrell to have your name added to BLM's mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Hurrell during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Gemfield Resources, Ltd. (GRL) proposes to construct and operate a conventional open-pit mining operation in the Goldfield Mining District of Esmeralda County, Nevada, as described in the Plan of Operations (Plan) submitted by GRL for the Gemfield Mine Project (Project). The proposed Project is located approximately 30 miles south of Tonopah, Nevada, and approximately 0.5 miles north of the town of Goldfield, Nevada. Goldfield is located approximately 30 miles south of Tonopah and 174 miles northwest of Las Vegas, Nevada.

Approximately 1,935.9 acres of land lies within the Plan boundary, including approximately 1,214.2 acres of BLM-administered land that is managed by the Tonopah Field Office of the Battle Mountain District and 721.7 acres of private land. The proposed Project would result in approximately 1,337.3 acres of surface disturbance, of which 969.4 acres would occur on BLM-administered land and 367.9 acres would occur on private land. If the Project is approved, GRL estimates the mine life would be approximately 12 years.

The Proposed Project includes the construction and operation of a conventional open-pit mining operation to extract and recover gold. The Proposed Project would include the following new components: Open pit; crushing facilities, conveyors, and associated stockpiles; waste rock disposal areas; overburden stockpile; stormwater diversions channels, sediment basins, and berms; heap leach pad, processing facilities, and ponds; water supply and dewatering wells and delivery/storage system; haul and secondary roads; exploration activities; and ancillary facilities including: Power supply; reagent, fuel, and explosives storage; buildings including administration, change house, laboratory, security, warehouse, and parking; water supply and septic systems; maintenance shop; ready line; vehicle wash; communications facilities; plant growth media stockpiles; area for temporary storage of petroleum-contaminated soils; groundwater monitoring wells; water-supply pipelines and facilities, borrow areas; fencing; yards; and stormwater controls and diversion structures.

Proposed right-of-way (ROW) amendments to existing BLM authorizations (relinquishments and amendments to existing authorizations) include the Nevada Department of Transportation (NDOT); AT&T; Esmeralda County; Sierra Pacific Power Company (SPPCo) doing business as NV Energy; and Nevada Hospital Association/SWITCH. Several ROW actions would require amendments to existing FLPMA grants, in accordance with 43 CFR 2800. New ROW actions include issuance of a grant to NDOT; authorizations of an east access road to Esmeralda County, and short-term construction ROWs for SPPCo DBA NV Energy in accordance with 43 CFR 2800 and Title V FLPMA. A Plan of Development that describes these amendments was submitted to the BLM in July 2013 (amended May 2017). These amendments would be necessary to accommodate the development and operation of the proposed Gemfield Mine.

Primary concerns identified in the Final EIS include potential impacts to water management over the life of the project, cultural resources, and land use and realty. The primary issues related to water resources and geochemistry, cultural resources, and land use and realty include: (1) Reduction in groundwater quantity from pit dewatering; (2) Impacts related to the water quality of the post-mining pit lakes; (3) Impacts to cultural resource sites from mine development; and (4) Impacts to land use and realty with the realignments of US Highway 95, utilities, and county roads. In addition to the Proposed Project, three alternatives were analyzed: The Reduced Mine Plan Alternative, the Partial Backfill Alternative, and the No Action Alternative.

The Draft EIS was made available for a 45-day public comment period that ended on April 22, 2019. A public meeting was held on March 28, 2019, in Goldfield, Nevada. A total of 15 comments were received during the public comment period. Responses to comments are included in the Final EIS.

The BLM has utilized and coordinated the NEPA scoping and comment process to help fulfill the public involvement requirements under the National Historic Preservation Act (NHPA) (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), and the agency continues to do so. The information about historical and cultural resources within the area potentially affected by the Proposed Project has assisted the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and the NHPA.

The BLM has consulted and continues to consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts to Indian trust assets and potential impacts to cultural resources have been analyzed in the Final EIS.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10)

Doug Furtado,

Battle Mountain District Manager.

[FR Doc. 2019–13259 Filed 6–20–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 19X]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Fish and Wildlife Service, the U.S. Forest Service, the U.S. National Park Service, and the BLM, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on July 22, 2019.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat and field notes of the dependent resurvey and survey in Township 7 North, Range 79 West, Sixth Principal Meridian, Colorado, were accepted on March 25, 2019.

The plat and field notes of the dependent resurvey and subdivision of sections in Township 7 North, Range 80 West, Sixth Principal Meridian, Colorado, were accepted on March 25, 2019.

The plat incorporating the field notes of the dependent resurvey in the NW¼ of section 27 in Township 5 North, Range 72 West, Sixth Principal Meridian, Colorado, was accepted on April 25, 2019.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and survey in Township 36 North, Range 7 West, New Mexico Principal Meridian, Colorado, was accepted on May 20, 2019.

The plat and field notes of the dependent resurvey and survey of a portion of Rocky Mountain National Park in Township 5 North, Range 73 West, Sixth Principal Meridian, Colorado, were accepted on May 23, 2019.

The plat and field notes of the dependent resurvey and subdivision of section 6 in partially surveyed Township 2 South, Range 90 West, Sixth Principal Meridian, Colorado, were accepted on May 29, 2019.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can 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.

Authority: 43 U.S.C. Chap. 3.

Randy A. Bloom,

Chief Cadastral Surveyor.

[FR Doc. 2019–13153 Filed 6–20–19; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF02000.L16100000.DP0000.19X]

Notice of Availability of the Draft Eastern Colorado Resource Management Plan and Draft Environmental Impact Statement for the Royal Gorge Field Office, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the Royal Gorge Field Office and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/Draft EIS within 90 days following the date the Environmental Protection Agency publishes its notice of availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: Comments related to the Draft Eastern Colorado RMP/EIS must be submitted by the following methods:

- Electronic comments must be submitted via the ePlanning website at *https://go.usa.gov/xQcZT.*
- Hard copy comments must be submitted via mail or hand-delivered to the Royal Gorge Field Office, 3028 E. Main St., Cañon City, CO 81212.

A copy of the Draft Eastern Colorado RMP/EIS is available at the Royal Gorge Field Office at the address above or on the RMP ePlanning website at: *https://go.usa.gov/xQcZT.* Click the Documents & Reports link on the left side of the screen to find the electronic version of these materials.

FOR FURTHER INFORMATION CONTACT: John Smeins, Project Manager, telephone: 719–269–8581; email: *jsmeins@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Smeins during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM prepared the Draft Eastern Colorado RMP/EIS to evaluate and revise the management strategy for resources, resource uses, and special designations within the Royal Gorge Field Office, which is the planning area for the RMP. Existing management decisions for public lands and resources in the Royal Gorge Field Office are currently described in two documents: The 1986 Northeast RMP, as amended; and the 1996 Royal Gorge RMP, as amended.

The Royal Gorge Field Office encompasses approximately 35 million acres of land under various jurisdictions, including the BLM, U.S. Forest Service, National Park Service, State of Colorado, and local and private lands in 37 counties across south-central and eastern Colorado. The

Browns Canyon National Monument is not part of the planning area for this RMP/EIS. The Eastern Colorado RMP will determine management for approximately 658,200 acres of BLM-administered surface land and approximately 3,311,900 acres of BLM-administered mineral estate located throughout south-central and eastern Colorado. Planning decisions for Federal minerals underlying National Forests and Grasslands are contained in separate documents prepared by the U.S. Forest Service.

The formal public scoping process for the Eastern Colorado RMP/EIS began on June 1, 2015, with the publication of a Notice of Intent in the **Federal Register** (80 FR 31063). The BLM held eight open-house scoping meetings in June and July 2015. The BLM used public scoping comments to help identify planning issues to formulate alternatives and frame the scope of analysis in the Draft RMP/EIS. The BLM also used the scoping process to introduce the public to the preliminary planning criteria, which defined the scope of the Draft RMP/EIS. Following the formal scoping period, the BLM made the Preliminary Alternatives and Draft Basis for Analysis available for public review to obtain feedback on the alternatives and the analysis strategy. The BLM held eight public meetings to review the alternatives. Based on information received during this review, the BLM modified the alternatives and the analysis.

Major issues considered in the Draft RMP/EIS are management of biological resources, special status species, renewable and nonrenewable energy, minerals, human activities, and uses including recreation and livestock grazing, utility/energy corridors and rights-of-way, and cultural resources. The RMP also considers decisions regarding wild and scenic rivers, areas of critical environmental concern (ACECs), and management of lands with wilderness characteristics. The Draft RMP/EIS evaluates in detail the No Action Alternative (Alternative A) and three action alternatives (Alternatives B, C and D). The BLM identified Alternative D as the Preferred Alternative. This alternative, however, does not represent the final agency direction. After the public comment period closes, the BLM will prepare a Proposed RMP, which may reflect changes or adjustments based on information received during public comment on the Draft RMP/EIS, new information, or changes in BLM policies or priorities. The Proposed RMP may include objectives and actions described in any of the alternatives analyzed in the Draft.

Alternative A retains the current management goals, objectives, and direction specified in the 1986 Northeast RMP and the 1996 Royal Gorge RMP. Alternative B emphasizes improving, rehabilitating, and restoring resources; sustaining the ecological integrity of habitats for all priority plant, wildlife and fish species; and allowing appropriate development scenarios for allowable uses (such as mineral leasing, recreation, communication sites and livestock grazing). Alternative C emphasizes a mix of uses that maximizes utilization of resources while protecting land health. The development scenarios for allowable uses in this alternative emphasize maximizing resource production in an environmentally responsible manner while maintaining the basic protection needed to sustain resources, including mitigating impacts on land health. Alternative D emphasizes balancing resources and resource use among competing human interests, land uses, and the conservation of natural and cultural resource values, while sustaining and enhancing ecological integrity across the landscape, including plant, wildlife, and fish habitat. This alternative has four geographic landscapes with distinct management, and incorporates a balanced level of protection, restoration and enhancement, as well as use of resources and services to meet ongoing programs and land uses with an emphasis on local community visions for the future of public lands.

Pursuant to 43 CFR 3461.2–1(a)(2), this notice announces a concurrent public comment period on the application of unsuitability criteria to lands with coal development potential. Maps and other information describing the results of the application of unsuitability criteria are available on the RMP ePlanning website and at the BLM Royal Gorge Field Office (see contact information above).

Pursuant to 43 CFR 1610.7–2(b), this notice announces a concurrent public comment period on the proposed designation of ACECs. The BLM analyzed ten potential ACECs meeting the relevance and importance criteria within the range of action alternatives:

- Alternative B would retain four ACECs in their current size—Arkansas Canyonlands (23,700 acres), Droney Gulch (700 acres), Grape Creek (16,600 acres) and Ruby Mountain/Railroad Gulch (1,800 acres); would expand three existing ACECs—Cucharas Canyon (6,100 acres), Garden Park (3,100 acres) and Top of the World (8,700 acres); and expand two existing ACECs into a single area—South Pikes Peak (40,400 acres).
- Alternative C would retain three current ACECs in their current size—Cucharas Canyon (1,400 acres), Garden Park (2,700 acres) and Top of the World (Mosquito Pass existing) (4,200 acres); reduce three existing ACECs—Arkansas Canyonlands (18,700 acres), Grape Creek (2,300 acres) and Phantom Canyon (5,500 acres); and eliminate three ACECs—Beaver Creek (12,100 acres), Droney Gulch (700 acres) and Ruby Mountain/Railroad Gulch (1,800 acres).
- Alternative D would retain one ACEC in its current size—Droney Gulch (700 acres); propose one new ACEC—Castle Gardens (300 acres); expand three existing ACECs—Cucharas Canyon (6,100), Garden Park (3,100 acres) and Top of the World (8,700 acres); reduce three existing ACECs—Arkansas Canyonlands (19,600 acres), Grape Creek (2,300 acres) and Phantom Canyon (5,500 acres); and eliminate two existing ACECs—Beaver Creek (12,100 acres) and portions of the Browns Canyon ACEC outside the National Monument (Ruby Mountain/Railroad Gulch (1,800 acres).

The following management prescriptions may apply to the individual ACECs under consideration if designated: Avoid rights-of-way, close or restrict fluid mineral development, close to mineral material disposal, restrict vehicles and bicycles to designated roads and trails, prohibit fuelwood permits and retain in public ownership. Please note that public comments and information submitted, including names, street addresses, and email addresses of persons who submit comments, will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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 can 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.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2)

Jamie E. Connell,

BLM Colorado State Director.

[FR Doc. 2019–13087 Filed 6–20–19; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC05000.L51010000.ER0000 .LVRWB18B6770.18XL1109AF (MO#4500134877)]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Walker Ridge Wind Energy Project and a Potential Amendment to the Ukiah Resource Management Plan, Colusa and Lake Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Ukiah Field Office, Ukiah, California, intends to prepare an Environmental Impact Statement (EIS) and a potential Resource Management Plan (RMP) amendment for the Ukiah Resource Management Plan. The EIS will analyze the impacts of a proposal by Colusa Wind LLC to build a Type III wind energy project called the Walker Ridge Wind Energy Project in Colusa and Lake counties. This notice announces the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until July 22, 2019. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance on the BLM website at *https://www.blm.gov/california.*

In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments related to the Walker Ridge Wind Energy Project by any of the following methods:

- *Website: https://go.usa.gov/xmtGu.*
- *Email: blm_ca_uk_walkerridgewindproject@blm.gov.*
- *Mail:* BLM Ukiah Field Office, Attn: Walker Ridge Wind Energy Project, 2550 N State Street, Suite 2, Ukiah, CA 95482.

Documents pertinent to this proposal may be examined at the BLM Ukiah Field Office listed earlier.

FOR FURTHER INFORMATION CONTACT: Aleta Nafus, Project Manager, telephone 707–468–4000; address Bureau of Land Management, 940 2nd Ave., Marina, CA 93933; email *blm_ca_uk_walkerridgewindproject@blm.gov.* Contact Ms. Nafus to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Nafus during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Colusa Wind LLC is requesting a right-of-way grant to erect up to 42 wind turbines on approximately 2,270 acres of public land along Walker Ridge, within the Indian Valley Management Area in northern California. The proposed project includes widening Walker Ridge Road, constructing a substation, and burying a collection line and tie-in to the existing Pacific Gas and Electric transmission line.

This document provides notice that the BLM Ukiah Field Office, intends to prepare an EIS and potential amendment for the Ukiah RMP, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Colusa and Lake counties, California, and encompasses approximately 2,270 acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. The issues include: Air quality and atmospheric values; biological resources, including special status wildlife and vegetation species; cultural resources; geology and soils; hazards and hazardous materials; hydrology and water quality; lands and realty; mineral resources; noise; paleontological resources; recreation; socioeconomics and environmental justice; special designations; transportation and travel management; visual resources; and wildland fire ecology. If an RMP amendment is necessary, the BLM will integrate the land use planning process with the NEPA process. Preliminary planning criteria include:

1. The plan amendments will be completed in compliance with FLPMA, NEPA, and all other relevant Federal laws, executive orders, and BLM policies;
2. The plan amendment(s) will recognize valid existing rights.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section earlier. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108 as provided in 36 CFR 800.2(d)(3)). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

With respect to the potential RMP amendment, the BLM will evaluate identified issues to be addressed in the plan amendment, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the EIS and potential land use plan amendments. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the EIS and potential land use plan amendments in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Minerals and geology, outdoor recreation, archaeology, paleontology, wildlife and botany, lands and realty, hydrology, soils, sociology, and economics.

Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1501.7 and 43 CFR 1610.2)

Danielle Chi,

Deputy State Director, Fire and Resources.

[FR Doc. 2019–13248 Filed 6–20–19; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–603–604 and 731–TA–1413–1414 (Final)]

Glycine From China, India, and Japan; 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 glycine (provided for in subheadings 2922.49.43 and 2922.49.80 of the Harmonized Tariff Schedule of the United States) from India and Japan that the U.S. Department of Commerce (''Commerce'') has determined are sold in the United States at less than fair value (''LTFV'') and imports of glycine that Commerce has determined are subsidized by the governments of China and India.

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective March 28, 2018, following receipt of petitions filed with the Commission and Commerce by Chattem Chemicals Inc., Chattanooga, Tennessee, and GEO Specialty Chemicals, Inc., Lafayette, Indiana. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of glycine from China and India were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and imports of glycine from India and Japan were being sold at LTFV within the meaning of 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** on December 3, 2018 (83 FR 62345). A revised notice of the scheduling of the final phase of the Commission's investigations was published on February 12, 2019 (84 FR 3486). The hearing was held in Washington, DC, on April 30, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on June 14, 2019. The views of the Commission are contained in USITC Publication 4900 (June 2019) entitled *Glycine from China, India, and Japan: Investigation Nos. 701–TA–603–604 and 731–TA–1413–1414 (Final).*

By order of the Commission.

Issued: June 14, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–13120 Filed 6–20–19; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1207–1208 (Review)]

Prestressed Concrete Steel Rail Tie Wire From China and Mexico; Termination of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission instituted the subject five-year reviews in May 2019 to determine whether revocation of the antidumping duty orders on prestressed concrete steel rail tie wire from China and Mexico would be likely to lead to continuation or recurrence of material injury. On June 10, 2019, the Department of Commerce published notice that it was revoking the orders effective June 24, 2019, because the domestic interested parties did not participate in these sunset reviews (84 FR 26816, June 10, 2019). Accordingly, the subject reviews are terminated.

DATES: June 14, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). This notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: June 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–13164 Filed 6–20–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1082]

Certain Gas Spring Nailer Products and Components Thereof; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (''ALJ'') has issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation of section 337. This notice is soliciting public

interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. 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 *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://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: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competition conditions in the United States economy, the production of like or directly competitive articles in the United States consumers, it finds that such articles should not be excluded from entry. 19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting comments on public interest issues raised by the recommended relief. The ALJ recommended, should the Commission find a violation, that the Commission issue a limited exclusion order directed against certain gas spring nailer products and components thereof imported, sold for importation, and/or sold after importation by respondent Hitachi Koki U.S.A., Ltd. (''Hitachi'') of Braselton, Georgia, and a cease and desist order directed against Hitachi.

The Commission is interested in further development of the record on the public interest in its investigations. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bond issued in this investigation on June 7, 2019. Comments should address whether issuance of remedial orders in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the recommended orders;

(iv) indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed by the close of business on Tuesday, July 2, 2019.

Persons filing written submissions must file the original document electronically on or before the deadline stated above and submit eight true paper copies to the Office of the Secretary pursuant to Commission Rule 210.4(f), CFR part 210.4(f). Submissions should refer to the investigation number (''Inv. No. 337–TA–1082'') in a prominent place on the cover page and/or the first page. ((*See* Handbook on Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.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 unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR part 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–13166 Filed 6–20–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1086]

Certain Mounting Apparatuses for Holding Portable Electronic Devices and Components Thereof; Final Commission Determination of Violation; Issuance of a General Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation with a finding of violation of section 337, and has issued a general exclusion order (''GEO'') directed against infringing mounting apparatuses for holding portable electronic devices and components thereof. The Commission has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. 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 28, 2017, based on a complaint filed on behalf of National Products Inc. (''NPI'') of Seattle, Washington. 82 FR 56266–67 (Nov. 28, 2017). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent Nos. 8,544,161 (''the '161 patent''), D703,657 (''the D'657 patent''), 8,186,636 (''the '636 patent''), D571,278 (''the D'278 patent''), D574,204 (''the D'204 patent''), and 9,568,148 (''the '148 patent''); and U.S. Trademark Registration No. 4,254,086 (''the '086 trademark''). The Commission's notice of investigation named the following respondents: Shenzhen Chengshuo Technology Co., Ltd., d/b/a WUPP (''WUPP'') of Zhejiang, China; Foshan City Qishi Sporting Goods, Technology Co., Ltd., Guangzhou Kean Products Co., Ltd., Gangzhou Kaicheng Metal Produce Co., Shenzhen Smilin Electronic Technology, Co., Ltd., and Shenzhen New Dream Intelligent Plastic, Co., Ltd., all of Guangdong, China; Chengdu MWUPP Technology Co., Ltd. of Sichuan Province, China; and Shenzhen Yingxue Technology Co., Ltd., d/b/a Yingxue Tech. (''Yingxue Technology''), Shenzhen Shunsihang Technology Co., Ltd., d/b/a BlueFire, and Prolech Electronics Limited, all of Shenzhen, China (collectively, ''the defaulting respondents''). The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. All respondents in the investigation have been found in default, and the D'278 patent has been terminated from the investigation. *See* Order No. 9 (May 8, 2018), *unreviewed by* Comm'n Notice (June 5, 2018); Order No. 10 (June 22, 2018), *unreviewed by* Comm'n Notice (July 18, 2018).

On November 28, 2018, the presiding administrative law judge (''ALJ'') issued an initial determination (''ID'') granting in part NPI's motion (as supplemented on July 10, July 19, and September 14, 2018) for summary determination of violation of section 337 by the defaulting respondents and request for issuance of a GEO. The ID finds that all defaulting respondents met the importation requirement and that NPI satisfied the domestic industry requirement. *See* 19 U.S.C. 1337(a)(1)(B), (a)(2), and (a)(3). The ID also finds that a violation of section 337 has occurred based on its finding that each of the defaulting respondents' accused products infringe one or more of the asserted claims of the patents at issue (except for the '161 patent) and infringe the '086 trademark as established by substantial, reliable, and probative evidence in accordance with 19 U.S.C. 1337(g)(2) and Commission rule 210.16(c)(2). Regarding the '161 patent, NPI alleged induced and contributory infringement of claim 1 of this patent with respect to the accused WUPP X-Grip Mount. The ID finds that NPI did not establish direct infringement of this claim by substantial, reliable, and probative evidence. The ID also contains the ALJ's recommended determination (''RD'') on remedy and bonding. The RD recommends issuance of a general exclusion order with respect to the asserted intellectual property.

On March 18, 2019, the Commission issued notice of its determination: (1) To review the ID's finding that direct infringement was not established with respect to claim 1 of the '161 patent; and (2) on review, to reverse this finding and remand to the ALJ the issue of whether NPI has established induced and contributory infringement of this claim. The Commission determined not to review the remainder of the ID. *See* Comm'n Notice (Mar. 18, 2019); Comm'n Order (Mar. 18, 2019) (containing the Commission's reasoning for reversing the ID in part).

On April 16, 2019, the ALJ issued a remand initial determination (''RID'') finding a violation of section 337 with respect to claim 1 of the '161 patent. Specifically, the RID finds that NPI has shown induced and contributory infringement of this claim by respondents WUPP and Yingxue Technology by substantial, reliable, and probative evidence. No party petitioned for review of the RID.

On May 10, 2019, the Commission issued notice of its determination not to review the RID. 84 FR 22162–64 (May 16, 2019). On the same date, the Commission requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. *Id.* On May 17, 2019, NPI and OUII each filed a brief regarding remedy, the public interest, and bonding, and on May 24, 2019, OUII filed a reply brief.

The Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a GEO prohibiting the unlicensed entry of mounting apparatuses for holding portable electronic devices and components thereof that infringe one or more of: Claim 1 of the '161 patent; the claim of the D'657 patent; claim 1 of the '636 patent; the claim of the D'204 patent; claim 1 of the '148 patent; and the '086 trademark.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the GEO. Finally, the Commission determined that there shall be a bond in the amount of 100 percent of the entered value of the covered products to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has terminated the investigation.

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: June 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–13161 Filed 6–20–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–752 (Fourth Review)]

Crawfish Tail Meat From China; Termination of Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission instituted the subject five-year review in April 2019 to determine whether revocation of the antidumping duty order on crawfish tail meat from China would be likely to lead to continuation or recurrence of material injury. On June 7, 2019, the Department of Commerce published notice that it was revoking the order effective May 16, 2019, because no domestic interested party responded to its sunset review notice of initiation by the applicable deadline (84 FR 26647). Accordingly, the subject review is terminated.

DATES: June 17, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher W. Robinson (202–205–2542), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). This notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: June 17, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–13160 Filed 6–20–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–448 and 731–TA–1117 (Second Review)]

Certain Off-the-Road Tires From China; Termination of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission instituted the subject five-year reviews in January 2019 to determine whether revocation of the antidumping and countervailing duty orders on certain off-the-road tires from China would be likely to lead to continuation or recurrence of material injury. On May 10, 2019, the Department of Commerce published notice that it was revoking the orders effective February 4, 2019, because it did not receive a notice of intent to participate from the domestic interested parties (84 FR 20616). Accordingly, the subject reviews are terminated.

DATES: June 17, 2019.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). This notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: June 18, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–13266 Filed 6–20–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Battery Innovation

Notice is hereby given that, on May 28, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Battery Innovation (''CBI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Acumuladores Moura S.A., Belo Jardim, BRAZIL; Addenda Corporation, Indianapolis, IN; Advanced Battery Concepts, Clare, MI; AFEMS, Brussels, BELGUIM; Affinerie de Pont Sainte Maxence, Brenouille, FRANCE; Akkumulatorenfabrik MOLL, Bad Staffelstein, GERMANY; Amer-Sil, Kehlen, LUXEMBOURG; ArcActive Limited, Christchurch, NEW ZEALAND; As Batteriretur, Borgenhaugen, NORWAY; Atomized Products Group, Inc., Chesapeake, VA; Aurubis AG, Hamburg, GERMANY; Banner GmbH, Linz, AUSTRIA; Battery Energy Power Solutions, Pty. Ltd., Fairfield, AUSTRALIA; Berzelius Metall GmbH, Braubach, GERMANY; Black Diamond Structures, Austin, TX; BMG Metall & Recycling, GmbH, Arnoldstein, AUSTRIA; Boliden AB, Stockholm, SWEDEN; BSB Recycling, Braubach, GERMANY; C&D Trojan Battery Company, Blue Bell, PA; Cabot Corporation, Billerica, MA; Calder Industrial Materials, Chester, UNITED KINGDOM; Campine Recycling, Beerse, BELGUIM; Cookson Group, London, UNITED KINGDOM; CoplosaSA, Barcelona, SPAIN; Crown Battery Mfg. Co., Fremont, IL; Daramic, LLC, Owensboro, KY; Doe Run Company, St. Louis, MO; East Penn Manufacturing, Lyon Station, PA; ECOBAT Technologies, Derbyshire, UNITED KINGDOM; Electric Applications Incorporated, Phoenix, AZ; EnerG2 Technologies, Inc., Seattle, WA; EnerSys, Reading, PA; EnerSys, Newport, UNITED KINGDOM; Engitec Technologies SpA, Novate Milanese, ITALY; EnviroWales, Gwent, UNITED KINGDOM; Exide Technologies Recycling II, Lda, Azambuja, PORTUGAL; Excide Technologies SLU, Poznan, POLAND; Furukawa Battery Co., Ltd., Iwaki City, JAPAN; Glencore, Baar, SWITZERLAND; Gopher Resource, Eagan, MN; Gravita India, Jaipur, INDIA; H Folke Sandelin AB, Motala, SWEDEN; HJ Enthoven & Sons, Derbyshire, UNITED KINGDOM; Hakurnas Lead Works, Ahood, ISRAEL; Hammond Group, Inc., Hammond, IN; Hoppecke Batterien GmbH & Co. KG, Brilon-Hoppecke, GERMANY; Interstate Batteries, Dallas, TX; JCI (Europe), Hannover, GERMANY; KCM SA, Plovdiv, BULGARIA; Kovohute Pribam, Pribram, CZECH REPUBLIC; LignoTech USA, Rothschild, WI; Livguard Batteries Private Limited, Gurgaon, INDIA; Lundin Mining, Stockholm, SWEDEN; Metallo Belgium N.V., Beerse, BELGUIM; Microporous, LLC, Piney Flats, TN; Microtex Energy Private Limited, Bangalore, INDIA; MPI Reciklaza, Cra Na Koroskem, SLOVENIA; Muldenhutten Recycling und Umwelttechnik GmbH, Bobritzsch-Hilbersdorf, GERMANY; Orion Engineered Carbons GmbH, Cologne, GERMANY; Penox GmbH, Ohrdrufr, GERMANY; Recylex, Nordenham, GERMANY; Rombat, Bistrita-Nasaud, ROMANIA; RSR Corporation, Dallas, TX; South32, Singapore, SINGAPORE; STCM, Bazoches-les-Gallerandes, FRANCE; Superior Graphite, Chicago, IL; TBS Engineering Ltd., Brockworth, UNITED KINGDOM; Teck Resources Limited, Anchorage, AL; Tydrolyte LLC, Troy, MI; WL Gore and Associates, Elkton, MD; WaveTech GmbH, Rheinbach, GERMANY; and Zhejiang Narada Power Source Co. Ltd., Hangzhou, PEOPLE'S REPUBLIC OF CHINA.

Participants will provide economic support, advice, and other assistance to CBI, which, as an ILA project, is subject to the oversight of the ILA Board of Directors.

ILA's current membership consists primarily of lead producers and other companies having a direct interest in lead and its use. ILA is a non-profit, tax-exempt research organization whose functions include the management of research to improve existing uses and advance new applications for lead. The CBI program has been established by ILA to carry out research and development of lead-based battery technologies. The CBI participants include companies who are not members of ILA.

The general area of CBI's planned activity is to serve the needs of its members by supporting cutting edge pre-competitive scientific research and promoting innovation in lead battery technology to maximize the market potential for lead batteries and the prosperity of actors in the lead battery value chain. CBI's vision is to be recognized by all stakeholders as the trusted global center for collaborative, pre-competitive lead battery research and authoritative voice on lead battery innovation by taking a leadership role in supporting lead battery research investment and the promotion of innovation. Membership in the Consortium includes lead producers; battery manufacturers; battery equipment, material and component manufacturers/suppliers; commodity traders; end users; research, testing and other services; universities; and affiliates. Consortium membership remains open, and the parties intend to file additional written notification disclosing all changes in membership to CBI.

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–13157 Filed 6–20–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–New]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Background Investigation Medical Release Forms

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation is 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.

DATES: The Department of Justice encourages public comment and will accept input until August 20, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gabrielle Fournet, Unit Chief, Federal Bureau of Investigation, 935 Pennsylvania Avenue NW, Washington, DC, *HQ-Div11-OGA1@FBI.gov,* 202–651–2906.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

➢ Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, including whether the information will have practical utility;

➢ 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;

➢ Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

➢ 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.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Background Investigation Medical Release Forms.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* FD–1152 and FD–1153. The applicable component within the Department of Justice is the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* This form is needed for obtaining medical information for non FBI personnel, for which the FBI has been requested to obtain medical release information. For instance, when the FBI has been requested to conduct background investigations on non-FBI employees applying for positions with other government agencies, sometimes medical information must be obtained. When it occurs, the non-FBI employee applying for the position is asked to complete the medical release form so the FBI has the authority to seek the medical information.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that not more than 50 people would need to complete this form in a year. It should only take each person about 15 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 12.5 total annual burden hours associated with this collection hours anticipated for the collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: June 18, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–13187 Filed 6–20–19; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0092]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Previously Approved Collection; September 11th Victim Compensation Fund Claim Form

AGENCY: September 11th Victim Compensation Fund, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Civil Division, September 11th Victim Compensation Fund (''VCF'' or ''Fund''), 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. This proposed information collection was previously published in the **Federal Register**, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until July 22, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jordana H. Feldman, Deputy Special Master, September 11th Victim Compensation Fund, P.O. Box 34500, Washington, DC 20043 (phone: 1–855–885–1555).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Fund, including whether the information will have practical utility;
—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;
—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
—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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* VCF Claim Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* N/A. Civil Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The September 11th Victim Compensation Fund provides compensation to any individual (or beneficiary of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001. The information collected from the VCF Claim Form will be used to determine whether claimants are eligible for compensation from the Fund, and if so, the amount of compensation they will be awarded. The Form consists primarily of two main sections: Eligibility and Compensation.

The Eligibility section seeks the information required by the James Zadroga 9/11 Health and Compensation Act of 2010 (''Zadroga Act''), Public Law 111–347 (January 2, 2011), as amended by James Zadroga 9/11 Victim Compensation Fund Reauthorization Act, Public Law 114–113 (December 18, 2015) (''Reauthorization Act'') to determine whether a claimant is eligible for the Fund, including information related to: Participation in lawsuits related to September 11, 2001; presence at a 9/11 crash site between September 11, 2001 and May 30, 2002; and physical harm suffered as a result of the air crashes and/or debris removal.

The Compensation section seeks the information required by the Zadroga Act, as reauthorized, to determine the amount of compensation for which the claimant is eligible. Specifically, the section seeks information regarding the claimant's loss of earnings or replacement services that are attributable to the 9/11 air crashes or debris removal; and any collateral source payments (such as insurance payments) that the claimant received or is entitled to receive and are attributable to the 9/11 air crashes or debris removal efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 65,000 respondents will complete the form in an average of 10 hours, including the time needed to gather the required supporting documentation.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 650,000 hours.

If additional information is required, contact Melody Braswell, Department Clearance Office, United States Department of Justice, Justice Management Division, Policy and Planning staff, Two Constitution Square, 145 N Street NE, 3E, 405A, Washington, DC 20530.

Dated: June 18, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–13190 Filed 6–20–19; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0010]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Application To Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms—ATF F 5320.20

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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. The proposed collection OMB 1140–0010 Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms (ATF Form 5320.20) is being revised due to an increase in the number of respondents, burden hours and cost burden associated with this IC.

DATES: Comments are encouraged and will be accepted for 60 days until August 20, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: James Chancey, National Firearms Act Division either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *nfaombcomments@atf.gov,* or by telephone at 304–616–4500.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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;
—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;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—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.

Overview of This Information Collection

(1) *Type of Information Collection (check justification or form 83):* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF F 5320.20.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): Business or other for-profit, Federal Government, and State, Local, or Tribal Government

Abstract: Certain National Firearms Act firearms may not be transported interstate or temporarily exported by any person, other than a qualified Federal firearms licensee, without approval from ATF. The associated regulation requires a written request. The Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA)—ATF Form 5320.20 provides for the regulatory requirements, and may be used as a written request.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 17,000 respondents will utilize the form once, and it will take each respondent approximately 20 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 5,610 hours, which is equal to 17,000 (# of responses) * 1 (# of responses per respondent) * .33 (20 minutes).

(7) *An Explanation of the Change in Estimates:* An estimated increase in the total respondents to this IC in 2019 has caused a rise in both the number of responses and burden hours for this IC by 7,000 and 2,310 hours respectively. The cost burden for this IC is also expected to increase by $4,130.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: June 18, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–13188 Filed 6–20–19; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0341]

Agency Information Collection Activities; Proposed eCollection eComments Requested: Revision of a Currently Approved Collection; Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Feedback Form Package

AGENCY: Office for Victims of Crime, Office of Justice Programs, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office of Justice Programs, Office for Victims of Crime will submit 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. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, allowing for a 60 day comment period.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment until July 22, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Shelby Jones Crawford, (202) 532–3612, Program Manager, Office for Victims of Crime, Office of Justice Programs, Department of Justice, 810 7th Street NW, Washington, DC 20530. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office of Justice Programs, Office for Victims of Crime including whether the information will have practical utility;
—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;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—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.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of Existing Collection.

2. *The Title of the Form/Collection:* OVC TTAC Feedback Form Package.

3. *The agency form number:* N/A. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal agencies/organizations. Other: Federal Government; Individuals or households; Not-for-profit institutions; Businesses or

other for-profit. Abstract: The Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Feedback Form Package is designed to collect the data necessary to continuously assess the satisfaction and outcomes of assistance provided through OVC TTAC for both monitoring and accountability purposes to continuously meet the needs of the victim services field. OVC TTAC will give these forms to recipients of training and technical assistance, scholarship applicants, users of the website and call center, consultants/instructors providing training, agencies requesting services, and other professionals receiving assistance from OVC TTAC. The purpose of this data collection will be to capture important feedback on the respondents' satisfaction and outcomes of the resources provided. The data will then be used to advise OVC on ways to improve the support that it provides to the victim services field at-large.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 25,425 respondents who will require an average of 10 minutes (ranging from 5 to 15 minutes across all forms) to respond to a single form each year.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection are estimated to be 4,609 hours (1,152 hours per year).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: June 18, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–13186 Filed 6–20–19; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; DOL-Only Performance Accountability, Information, and Reporting System (OMB Control Number 1205–0521)

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL), Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision to the authority to conduct the information collection request (ICR) titled, ''DOL-only Performance Accountability, Information, and Reporting System.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by August 20, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Andrea Hill by telephone at 202–693–3542 (this is not a toll-free number), TTY 1–877–889–5627 (this is not toll-free number), or by email at *Apprenticeship.Grants-ETA@DOL.gov,* with ''**Federal Register** comment'' in the subject line. Submit written comments about, or requests for a copy of, this ICR by:

- Mail or courier to
  - U.S. Department of Labor, Employment and Training Administration Office of Apprenticeship, 200 Constitution Avenue NW, Room C–5311, Washington, DC 20210;
- *by email to:*
  - *Apprenticeship.Grants-ETA@DOL.gov.*

Authority: 44 U.S.C. 3506 (c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This consultation helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Section 116 of WIOA requires States that operate core programs of the publicly-funded workforce system to comply with common performance accountability requirements. As such, States that operate core programs must submit common performance data to demonstrate that specified performance levels are achieved.

The data collections in this ICR fulfill requirements in WIOA Sec. 116(d)(1), which mandates that the Secretaries of Labor and Education develop a template for the annual performance reports to be used by States, local boards, and eligible providers of training services for reporting on outcomes achieved by the WIOA core programs. Pursuant to WIOA sec. 116(d)(2), required annual data for the core programs include, among others, those related to primary performance indicators, participant counts and costs, and barriers to employment. These data collections also assist DOL in carrying out its mission under the National Apprenticeship Act. DOL proposes to amend the DOL-only information collection by making changes to the Participant Individual Record Layout (ETA–9172), and the (Program) Performance Report (ETA–9173–APPSHP) to facilitate State and grantee quarterly performance reporting. DOL is also adding a new information collection requirement to this ICR, the Apprenticeship Employer Record Layout. Particularly, as part of its effort to streamline program performance reporting, DOL is adding the performance information collection requirements for ETA grants with significant apprenticeship components as a primary goal of the program (Apprenticeship Grants).

This notice includes the ETA (Program) Performance Report specifically for Apprenticeship Grants, the Participant Individual Record Layout (PIRL), and the Apprenticeship Employer Record Layout. The DOL requires States and grantees to certify and submit the ETA (Program) Performance Report to ETA on a quarterly basis. ETA will aggregate the information the States and grantees submit through the PIRL to populate the ETA (Program) Performance Report. In addition, DOL is seeking approval to require grantees to certify and submit the Apprenticeship Employer Record Layout to ETA on a quarterly basis.

The ETA (Program) Performance Report has been designed to maximize the value of the reports for workers, jobseekers, employers, local elected officials, State officials, Federal policymakers, and other key stakeholders. The PIRL has been designed to reflect the specific requirements of the annual reports as described in WIOA section 116(d)(2) through (4).

ETA will use the data to track total participants, characteristics, services, training strategies and outcomes for employed, unemployed and long-term unemployed participants. This data collection format permits program offices to evaluate program effectiveness, monitor compliance with statutory requirements, and analyze participant activity and grantee performance while complying with OMB efforts to streamline Federal performance reporting.

Under WIOA section 116(d)(6), the Secretary of Labor is required to annually make available (including by electronic means), in an easily understandable format, (a) the State Annual Performance Reports containing the information described in WIOA section 116(d)(2) and (b) a summary of the reports, and the reports required under WIOA section 116(d)(6) (the State Performance, Local Area, and Eligible Training Provider Reports), to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

The reports and other analyses of the data will be made available to the public through publication and other appropriate methods and to the appropriate congressional committees through copies of such reports. In addition, information obtained through the DOL-only Performance Accountability, Information, and Reporting System will be used at the national level during budget and allocation hearings for DOL compliance with the Government Performance and Results Act and other legislative requirements, and during legislative authorization proceedings.

As mentioned above, as part of DOL's effort to improve program performance reporting, DOL added the performance information collection requirements for Apprenticeship Grants to this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention DOL-only Performance Accountability, Information, and Reporting System OMB Control No. 1205–0521.

Submitted comments will also be a matter of public record to this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments. DOL is particularly interested in comments that:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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).

Agency: DOL–ETA.

Type of Review: Revision to include the Apprenticeship Grants.

Title of Collection: DOL-only Performance Accountability, Information, and Reporting System.

Form: Participant Individual Record Layout (ETA–9172), (Program) Performance Report (ETA–9173–APPSHP), and Apprenticeship Employer Record Layout.

OMB Control Number: 1205–0521.

Affected Public: State, Local, and Tribal Governments; Individuals or Households; and Private Sector—businesses or other for-profits and not-for-profit institutions.

Estimated Number of Respondents: 17,583,145.

Frequency: Varies.

Total Estimated Annual Responses: 35,166,446.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 9,808,425 hours.

Total Estimated Annual Other Cost Burden: $224,393,569.

Molly E. Conway,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2019–13162 Filed 6–20–19; 8:45 am]

BILLING CODE 4510–FR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–035)]

Notice of Information Collection: NASA Safety Reporting System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—Extension of a currently approved collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Gatrie Johnson, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gatrie Johnson, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *Gatrie.Johnson@NASA.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection provides a means by which NASA contractors can voluntarily and anonymously report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

II. Methods of Collection

The current, paper-based reporting system ensures the protection of a submitter's anonymity and secure submission of the report by way of the U.S. Postal Service.

III. Data

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Average Expected Annual Number of Activities: 75.

Average Number of Respondents per Activity: 1.

Annual Responses: 75.

Frequency of Responses: As needed.

Average Minutes per Response: 15 minutes.

Burden Hours: 19.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gatrie Johnson,

NASA PRA Clearance Officer.

[FR Doc. 2019–13215 Filed 6–20–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[FDMS Docket NARA–19–0007; NARA–2019–028]

Changes to Agency Records Schedule; Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of consolidated reply to comments on records schedule DAA–0567–2015–0013 (DHS–ICE-Detainee Records), and request for comments.

SUMMARY: We are publishing a consolidated reply to public comments submitted on a previously open proposed records schedule. On July 14, 2017, NARA published notice in the **Federal Register** of proposed records schedule DAA–0567–2015–0013. The Department of Homeland Security, Immigration and Customs Enforcement (ICE), Detainee Records submitted this proposed schedule for ''records related to detainees, including incidents of sexual abuse and assault, escapes, deaths while in agency custody, telephone rates charged to detainees, alternatives to detention, logs and reports on status of detainees and detention facilities, and location and segregation of detainees.'' We received comments on this records schedule and are providing a consolidated reply on those comments on *regulations.gov* at docket NARA–19–0007. We are also inviting public comment on the reply.

DATES: Submit any comments in writing no later than August 5, 2019. We will not consider late comments.

ADDRESSES: You can find and read the consolidated reply on *regulations.gov* under docket number NARA–19–0007. You may submit comments by either of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov, docket number NARA–19–0007.

Mail: Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road, College Park, MD 20740–6001. You must cite the control number DAA–0567–2015–0013 in your comment.

FOR FURTHER INFORMATION CONTACT: Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301.837.1799. For information on this notice, contact Kimberly Keravuori by email at *regulation_comments@nara.gov.*

SUPPLEMENTARY INFORMATION: We have revised this proposed records schedule based on public comments and discussions with the agency proposing the schedule. We are now inviting follow-on public comments on the appropriateness of the disposition instructions and retention periods for the items that remain on the revised schedule.

Your written comments on this proposed records schedule should be specific, should be confined to issues pertinent to the records schedule, and should explain your reason(s) for any change you recommend to the schedule. Where possible, you should reference the specific item you are addressing. We will accept only comments submitted through *www.regulations.gov* or mail and will not consider comments filed after the deadline.

We will post another consolidated reply to all comments we receive during this comment period, which will be posted to the same docket on *regulations.gov*.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a second consolidated reply, summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States.

You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the second consolidated reply, whether or not you submit a comment. You may request additional information about the disposition process through the contact information listed above.

NARA does not control access to records in the legal custody of ICE or any other agency. The Freedom of Information Act (FOIA) and agency policy govern the right to access information in these executive branch agency records.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2019–13085 Filed 6–20–19; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

STEM Education Advisory Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: STEM Education Advisory Panel (#2624).

Date and Time: July 19, 2019; 8:30 a.m.–5 p.m.

Place: National Aeronautical and Space Administration, 300 E Street SW, Washington, DC 20546.

Type of Meeting: Part-Open.

Contact Person: Anyone planning to attend this meeting must provide their names to Keaven Stevenson, Directorate Administrative Coordinator, Room C 11044, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 by 12 noon on Monday, July 15, 2019. Contact Information: 703–292–8663/*kstevens@nsf.gov.*

Purpose of Meeting: To share and collect information in support of members' role in advising the Committee on Science, Technology, Engineering, and Mathematics Education (CoSTEM).

Agenda: STEM Education Advisory Panel agenda attached. Please check the website for any additional updates prior to the meeting at *https://nsf.gov/ehr/STEMEdAdvisory.jsp.*

Reason for Closing: The panel will review and discuss a draft government report during closed portions of the meeting. This discussion must be kept confidential. These matters are exempt under 5 U.S.C. 552b(c), (9)(B) of the Government in the Sunshine Act.

Dated: June 18, 2019.

Crystal Robinson,

Committee Management Officer.

STEM Education Advisory Panel

Committee Meeting Agenda

Friday, July 19, 2019

Location: National Aeronautical and Space Administration, 300 E Street SW, Washington, DC 20546

8:30 a.m.–9 a.m. Introductions

9 a.m.–10:15 a.m. Discussion of Internal Government Draft Report (CLOSED)

10:15 a.m.–10:30 a.m. Break

10:30 a.m.–11:30 a.m. FC–STEM IWG Presentations

11:30 a.m.–12:30 p.m. Working Lunch

12:30 p.m.–12:45 p.m. Prepare for CoSTEM Members

12:45 p.m.–1 p.m. Welcome from OSTP Director

1 p.m.–2:15 p.m. Remarks from and Q and A with CoSTEM Leadership and Members

2:15 p.m.–2:30 p.m. Break

2:30 p.m.–4:15 p.m. Subcommittee Meetings (CLOSED)

4:15 p.m.–4:45 p.m. Report back to Panel

4:45 p.m.–5 p.m. Closing Remarks

Current as of: June 18, 2019.

[FR Doc. 2019–13174 Filed 6–20–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0232]

Environmental Dosimetry-Performance Specifications, Testing, and Data Analysis

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 to Regulatory Guide (RG) 4.13, ''Environmental Dosimetry-Performance Specifications, Testing, and Data Analysis.'' Revision 2 provides updated guidance that the NRC staff considers acceptable for performing surveys and evaluations of public dose in the unrestricted area and the controlled area of a licensed facility from direct radiation using environmental dosimetry. The RG endorses the American National Standards Institute/Health Physics Society (ANSI/HPS) N13.37–2014, ''Environmental Dosimetry-Criteria for System Design and Implementation.''

DATES: Revision 2 to RG 4.13 is available on June 21, 2019.

ADDRESSES: Please refer to Docket ID NRC–2018–0232 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document, using the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0232. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals 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 in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 2 to Regulatory Guide 4.13 and the regulatory analysis may be found in ADAMS under Accession Nos. ML19044A595 and ML18087A167 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.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Steven Garry, Office of Nuclear Reactor Regulation, telephone: 301–415–2766, email: *Steven.Garry@nrc.gov,* and Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 2 of RG 4.13 was issued with a temporary identification of Draft Regulatory Guide, DG–4019, to provide updated guidance that the NRC staff considers acceptable for performing surveys and evaluations of public dose in the unrestricted area and the controlled area of a licensed facility from direct radiation using environmental dosimetry.

This revision also provides updated NRC guidance on an acceptable dosimetry program by endorsing ANSI/HPS N13.37–2014. The 2014 ANSI/HPS standard provides up-to-date environmental dosimetry system design criteria and dosimeter laboratory test protocols and data-analysis methods suitable to assess potential facility-related radiation doses.

II. Additional Information

The NRC published a notice of the availability of DG–4019 in the **Federal Register** on October 17, 2018 (83 FR 52576) for a 60-day public comment period. The public comment period closed on December 17, 2018. Public comments on DG–4019 and the staff responses to the public comments are available under ADAMS under Accession No. ML19044A594.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

This RG provides guidance on establishing and conducting an environmental dosimetry program that the NRC staff considers acceptable for monitoring direct radiation released into the unrestricted area and the controlled area of a licensed facility. The NRC regards these requirements as constituting information collection and reporting requirements. The NRC has long taken the position that information collection and reporting requirements are not subject to the NRC's backfitting and issue finality regulations in title 10 of the *Code of Federal Regulations* (CFR) 50.109, 10 CFR 70.76, 10 CFR 72.62, 10 CFR 76.76 and 10 CFR part 52 (*e.g.,* ''Material Control and Accounting Methods,'' December 23, 2002 (67 FR 78130); and ''Regulatory Improvements to the Nuclear Materials Management and Safeguards System,'' June 9, 2008 (73 FR 32453)). Therefore, the NRC has determined that its backfitting and issue finality regulations do not apply to this RG because the RG does not include any provisions within the scope of matters covered by the backfitting provisions in 10 CFR parts 50, 70, 72, or 76, or the issue finality provisions of 10 CFR part 52.

Dated at Rockville, Maryland, this 18th day of June 2019.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2019–13277 Filed 6–20–19; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

[DFC–001; DFC–002; DFC–003; DFC–004, DFC–005, DFC–006, DFC–007; DFC–009; DFC–010; DFC–012]

Submission for OMB Review; Comments Request

AGENCY: US International Development Finance Corporation (DFC), Overseas Private Investment Corporation (OPIC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is creating a new information collection for OMB review and approval and requests public review and comment on the submission. The agency received no comments to DFC–002, DFC–005, or DFC–012 in response to the sixty (60) day notice. The agency did receive comments to DFC–001, DFC–003, DFC–004, DFC–006, DFC–007, DFC–009, and DFC–010. The purpose of this notice is to allow an additional thirty (30) days for public comments to be submitted. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology.

DATES: DFC intends to begin use of this collection on October 1, 2019. Comments must be received by July 15, 2019.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Catherine F.I. Andrade, Agency Submitting Officer, Overseas Private Investment Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@opic.gov*.

Instructions: All submissions received must include the agency name and agency form number for the referenced information collection(s). Electronic submissions must include the full agency form number(s) in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Catherine F.I. Andrade, (202) 336–8768.

SUPPLEMENTARY INFORMATION: The Better Utilization of Investments Leading to Development (BUILD) Act of 2018, Public Law 115–254 creates the U.S. International Development Finance Corporation (DFC) by bringing together the Overseas Private Investment Corporation (OPIC) and the Development Credit Authority (DCA) office of the U.S. Agency for International Development (USAID). Section 1465(a) of the Act tasks OPIC staff with assisting DFC in the transition. Section 1466(a)–(b) provides that all completed administrative actions and all pending proceedings shall continue through the transition to the DFC. Accordingly, OPIC is issuing this Paperwork Reduction Act notice and request for comments on behalf of the DFC. The agency received comments to DFC–001, DFC–003, DFC–004, DFC–006, DFC–007, DFC–009, and DFC–010, in response to the sixty (60) day notice published in **Federal Register** volume 84 page 10843 on March 22, 2019. The agency amended the instructions to DFC–001 to make it clear that an explanation of the project's social-developmental goals was a requirement to submission and that supporting documentation for the application is an important requirement. Language was added to DFC–003 requiring the applicant to demonstrate how it will monitor a project to avoid harm to project-affected communities, consult with project-affected communities, and provide access to remedy for project-affected communities in the case of negative impacts. In DFC–004, the agency added and amended language on accountability practices. No changes were made to the remaining collections.

Summary Forms Under Review

Title of Collection: Application for Debt Financing.

Type of Review: New information collection.

Agency Form Number: DFC–001.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 220.

Estimated Time per Respondent: 1.5 hours.

Total Estimated Number of Annual Burden Hours: 330 hours.

Abstract: The Application for Debt Financing will be the principal document used by the agency to determine the investor's and the project's eligibility for debt financing and will collect information for financial underwriting analysis.

Title of Collection: Registration for Political Risk Insurance.

Type of Review: New information collection.

Agency Form Number: DFC–002.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 175.

Estimated Time per Respondent: 0.5 hours.

Total Estimated Number of Annual Burden Hours: 87.5 hours.

Abstract: The Registration for Political Risk Insurance will be used by the agency to screen investors and projects for political risk insurance. Investors will be asked to register their intention to apply for insurance prior to making an irrevocable investment. DFC–002 will serve as proof of this intention and any investments made prior to the submission of a DFC–002 may be ineligible for political risk insurance from the agency.

Title of Collection: Application for Political Risk Insurance.
Type of Review: New information collection.
Agency Form Number: DFC–003.
OMB Form Number: Not assigned, new information collection.
Frequency: Once per investor per project.
Affected Public: Business or other for-profit; not-for-profit institutions; individuals.
Total Estimated Number of Annual Number of Respondents: 45.
Estimated Time per Respondent: 3 hours.
Total Estimated Number of Annual Burden Hours: 135 hours.
Abstract: The Application for Political Risk Insurance will be the principal document used by the agency to determine the investor's and the project's eligibility for political risk insurance and will collect information for underwriting analysis.

Title of Collection: Investment Funds Application.
Type of Review: New information collection.
Agency Form Number: DFC–004.
OMB Form Number: Not assigned, new information collection.
Frequency: Once per investor per project.
Affected Public: Business or other for-profit; not-for-profit institutions; individuals.
Total Estimated Number of Annual Number of Respondents: 150.
Estimated Time per Respondent: 1 hours.
Total Estimated Number of Annual Burden Hours: 150 hours.
Abstract: The Investment Funds Application will be the principal document used by the agency to determine the investor's and the project's eligibility for funding and will collect information for underwriting analysis.

Title of Collection: Personal Financial Statement.
Type of Review: New information collection.
Agency Form Number: DFC–005.
OMB Form Number: Not assigned, new information collection.
Frequency: Once per investor per project.
Affected Public: Individuals.
Total Estimated Number of Annual Number of Respondents: 75.
Estimated Time per Respondent: 1 hours.
Total Estimated Number of Annual Burden Hours: 75 hours.
Abstract: The Personal Financial Statement will be supporting documentation to the agency's Application for Debt Financing (DFC–001). The information provided will be used by the agency to determine if individuals who are providing equity investment in or credit support to a project have sufficient financial wherewithal to meet their expected obligations under the proposed terms of the agency's financing.

Title of Collection: Personal Identification Form.
Type of Review: New information collection.
Agency Form Number: DFC–006.
OMB Form Number: Not assigned, new information collection.
Frequency: Once per party per project.
Affected Public: Business or other for-profit; not-for-profit institutions; individuals.
Total Estimated Number of Annual Number of Respondents: 500.
Estimated Time per Respondent: 1 hours.
Total Estimated Number of Annual Burden Hours: 500 hours.
Abstract: The Personal Identification Form will used by the agency in its Character Risk Due Diligence procedures, which are similar to a commercial bank's Know Your Customer procedures. The agency will perform a robust due diligence review on each party that has a significant relationship to the projects the agency supports and this collection is one aspect of that review.

Title of Collection: DFC Impact Assessment Questionnaire.
Type of Review: New information collection.
Agency Form Number: DFC–007.
OMB Form Number: Not assigned, new information collection.
Frequency: Once per investor per project.
Affected Public: Business or other for-profit; not-for-profit institutions; individuals.
Total Estimated Number of Annual Number of Respondents: 230.
Estimated Time per Respondent: 2.8 hours.
Total Estimated Number of Annual Burden Hours: 644 hours.
Abstract: The DFC Impact Assessment Questionnaire is the principal document used by the agency to initiate the assessment of the project's development impact, as well as the project's ability to comply with environmental and social policies, including labor and human rights, as consistent with the agency's authorizing legislation.

Title of Collection: Aligned Capital Investor Screener.
Type of Review: New information collection.
Agency Form Number: DFC–009.
OMB Form Number: Not assigned, new information collection.
Frequency: Once per investor.
Affected Public: Business or other for-profit; not-for-profit institutions; individuals.
Total Estimated Number of Annual Number of Respondents: 50.
Estimated Time per Respondent: 0.33 hours.
Total Estimated Number of Annual Burden Hours: 16.5 hours.
Abstract: The Aligned Capital Investor Screener is a document used to screen potential investors interested in participating in the agency's Aligned Capital Program and, if they qualify, to place their information into the program. The Aligned Capital Program is designed to align development finance with other capital, including philanthropic, socially responsible and impact investment, to enable effective deployment of that capital towards projects in the countries and sectors in which the agency works. In order to participate, investors must meet the specified criteria.

Title of Collection: Aligned Capital Investee Opt-In.
Type of Review: New information collection.
Agency Form Number: DFC–010.
OMB Form Number: Not assigned, new information collection.
Frequency: Once per investor per project.
Affected Public: Business or other for-profit; not-for-profit institutions; individuals.
Total Estimated Number of Annual Number of Respondents: 75.
Estimated Time per Respondent: 0.5 hours.
Total Estimated Number of Annual Burden Hours: 37.5 hours.
Abstract: The Aligned Capital Investee Opt-In is a document used by companies seeking investments or grant funding to place their information into the agency's Aligned Capital Program. The Aligned Capital Program is designed to align development finance with other capital, including philanthropic, socially responsible and impact investment, to enable effective deployment of that capital towards projects in the countries and sectors in which the agency works.

Title of Collection: Economic Questionnaire.
Type of Review: New information collection.
Agency Form Number: DFC–012.
OMB Form Number: Not assigned, new information collection.
Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 100.

Estimated Time per Respondent: 1.5 hours.

Total Estimated Number of Annual Burden Hours: 150 hours.

Abstract: The Economic Questionnaire is to be used on an as needed basis to collect information about potential exports of DFC-supported projects.

Dated: June 17, 2019.

Genevieve Stubbs,

Senior Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2019–13104 Filed 6–20–19; 8:45 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–153 and CP2019–170; CP2019–171]

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:* June 24, 2019.

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

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 3007.301.[1]

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).:* MC2019–153 and CP2019–170; *Filing Title:* USPS Request to Add Priority Mail Contract 534 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 14, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* June 24, 2019.

2. *Docket No(s).:* CP2019–171; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 14, 2019; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* June 24, 2019.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–13106 Filed 6–20–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Science and Technology Policy

National Research Strategy for the President's Roadmap To Empower Veterans and End the National Tragedy of Suicide (PREVENTS)

AGENCY: Office of Science and Technology Policy (OSTP), Executive Office of the President.

ACTION: Request for information.

SUMMARY: To advance the President's vision of a National Roadmap to Empower Veterans and End Suicide, OSTP and VA will lead development of a National Research Strategy to improve the coordination, monitoring, benchmarking, and execution of public- and private-sector research related to the factors that contribute to veteran suicide. Through this RFI, we seek input on ways to increase knowledge about factors influencing suicidal behaviors and ways to prevent suicide; inform the development of a robust and forward looking research agenda; coordinate relevant research efforts across the Nation; and measure progress on these efforts. The public input provided in response to this RFI will inform the Veteran Wellness, Empowerment, and Suicide Prevention Task Force, who will develop and implement the National Research Strategy.

DATES: Response Deadline: July 15, 2019.

FOR FURTHER INFORMATION CONTACT: Jennifer Shieh at 202–456–4444. Emails may be addressed to *RFIresearchresponse@va.gov.* Questions, comments or RFI submissions via email should include ''RFI Response: National Research Strategy for the President's Roadmap to Empower Veterans and End the National Tragedy of Suicide (PREVENTS)'' in the subject line of the message. Please designate the question(s) you are answering by providing the letter and number of the specific question(s) below prior to providing your answer(s).

SUPPLEMENTARY INFORMATION: On March 5, 2019, President Trump signed

Executive Order (E.O.) 13861 mandating the development of the President's Roadmap to Empower Veterans and End the National Tragedy of Suicide (PREVENTS). The Roadmap will include a National Research Strategy to advance efforts to improve quality of life and reduce the rate of suicide among veterans by better coordinating research within and beyond the Federal government, and enhancing the integration of research across the social, behavioral, and biological determinants of wellness and brain health.

We aim to understand the full spectrum of factors influencing veteran suicide. Efforts are needed that would allow early detection of trauma in the brains of living people and improve our understanding and ability to prevent conditions or factors that contribute to suicide. We aim to incorporate public health approaches that target prevention strategies and address intervention for individuals, communities, and the broader population.

Reducing the rate of suicide in the veteran population will require an innovative, concerted approach to public health, with wide stakeholder input. The Federal government alone cannot address these challenges; therefore, we seek to involve the Nation's full research and development (R&D) ecosystem, and collaborate with state, local, territorial, and tribal governments, as well as community members, industry, non-profit organizations, and academic institutions to ensure that veterans have access to effective suicide prevention services. Our collective efforts begin with the common understanding that suicide is preventable, and that prevention requires ongoing support prior to and beyond intervention at the point of crisis. To end veteran suicide, we must develop a holistic understanding of the underlying factors that determine the overall health and well-being of our Nation's veterans.

The National Research Strategy shall include milestones and metrics designed to:

i. Improve our ability to identify individual veterans and groups of veterans at greater risk of suicide;

ii. Develop and improve individual interventions that increase overall veteran quality of life and decrease the veteran suicide rate;

iii. Develop strategies to better ensure the latest research discoveries are translated into practical applications and implemented quickly;

iv. Establish relevant data-sharing protocols across Federal agencies that align with community collaborators;

v. Draw upon technology to capture and use health data from non-clinical settings to advance behavioral and mental health research to the extent practicable;

vi. Improve coordination among research efforts, prevent unnecessarily duplicative efforts, identify barriers to or gaps in research, and facilitate opportunities for improved consolidation, integration, and alignment; and

vii. Develop public-private collaboration models to foster innovative and effective research that accelerates these efforts.

Further Instructions: All public comments are welcome and should be submitted by July 15, 2019 in order to ensure they are considered in the National Research Strategy. Responses may be submitted online at *https://www.research.va.gov/PREVENTS/.*

Response to this RFI is voluntary, and respondents need not reply to all questions. Each individual or institution is requested to submit only one response, and to indicate whether it is an individual or organizational response. 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 containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

All submissions, including attachments and other supporting materials, will become part of the public record and are subject to public disclosure. Responses to this RFI, without change, may be posted on a Federal website. Therefore, no business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

Questions To Inform Development of the National Research Strategy

A. How can we improve our ability to identify individual veterans and groups of veterans at greater risk of suicide?

1. What are the most critical near-term and long-term areas for research into factors influencing veteran suicide and methods to assess an individual's risk of suicide?

2. What are the biggest gaps in capability to identify and address the social, behavioral, and biological determinants of health leading to suicidal behavior in veterans? Consider associated conditions such as mental illness, traumatic brain injury (TBI), chronic traumatic encephalopathy (CTE), posttraumatic stress disorder (PTSD), and depression, as well as social determinants of health and research in intervention and post-intervention strategies.

3. How can various disciplines (*e.g.,* neurology, endocrinology, psychology) work together to better understand and address individual risk factors that lead to veteran suicide? How can different disciplines work together to develop individual intervention strategies?

B. How can we develop and improve individual interventions that increase overall veteran quality of life and decrease the veteran suicide rate?

4. How might we better understand the progression of veterans as they transition from military to civilian life in a way that supports identification of suicide risk factors, protective factors, and opportunities for intervention that addresses veterans at various stages of transition, before the point of crisis?

5. What are currently known effective and promising or emerging practices for suicide prevention? What factors make these practices effective? What additional research is needed to demonstrate the effectiveness of promising practices?

6. What tools, platforms, methods, or technologies are needed to advance:

- Understanding of suicide risk factors
- Assessment of individuals most likely to be at risk of suicide
- Evaluation of protective factors leading to the prevention of suicide
- Improvements in social connection and community engagement of veterans
- Identification of opportunities for intervention far before the point of crisis

7. What are barriers to the adoption of existing tools, platforms, methods, or technologies that identify suicide risk factors or provide effective interventions?

C. How can we develop strategies to better ensure the latest research discoveries are translated into practical applications and implemented quickly?

8. What types of organizations should be engaged in developing and implementing the National Research Strategy? Which existing consortia or partnerships should be involved, and why? Are there existing organizations that have been effective in identifying and mitigating veteran suicide risks? Are there programs and resources

within communities that have been successful? What factors made these programs successful?

9. How can the Federal government strengthen the public health system, including mental health and crisis intervention education and training programs, to ensure an adequate, well-trained medical workforce that is well-equipped to respond to the challenge of veteran suicide?

10. What are the primary barriers to adoption of current best practices for the assessment, evaluation and implementation of public health approaches targeting suicide prevention?

11. What are effective methods to quickly transition promising practices into clinical and community practice? Where have these methods been demonstrated to work previously?

12. What are methods and models to evaluate and measure outcomes and effectiveness of interventions?

13. What are the key elements in building a robust and forward looking research agenda, in addition to translating research outcomes?

D. How best to establish relevant data-sharing protocols across Federal partners that align with community partners?

14. How can Federal data, such as that from the Federal Interagency Traumatic Brain Injury Research (FITBIR) informatics system, be best leveraged in combination with local or regional data to provide new insights into trauma or the progression of disease? Are there technological limitations that prevent use of Federal data from generating information to predict outcomes?

15. What data or types of data are required to advance research efforts? Are there existing sources of data or validated datasets related to veteran suicide, mental health, risk determination, brain injury, or other relevant areas that have been previously underutilized in Federal efforts?

E. How should we draw upon technology to capture and use health data from non-clinical settings to advance behavioral and mental health research to the extent practicable?

16. How can both clinical and non-clinical data be better used to inform research efforts, and enhance current models of predictive analytics?

17. Are social determinants or risk factors being used to target services or provide outreach? If so, how? How are the beneficiaries with social risk identified?

18. Are there especially promising strategies for improving care of patients with social risk?

19. How are costs for targeting and providing those services evaluated? What are the additional costs to services, such as case management, and to provide additional services (*e.g.,* transportation)? What is the return on investment in improved outcomes or reduced healthcare concern?

F. How can we improve coordination among research efforts, prevent unnecessarily duplicative efforts, identify barriers to or gaps in research, and facilitate opportunities for improved consolidation, integration, and alignment?

G. How can we develop a public-private collaboration model to foster innovative and effective research that accelerates these efforts?

H. Please provide any additional information not addressed by previous questions that is crucial to the creation, implementation, and success of a National Research Strategy to improve the coordination, monitoring, benchmarking, and execution of public- and private-sector research related to the factors that contribute to service member and veteran suicide.

Thank you sincerely for contributing to efforts to end Veteran suicide.

(Authority: Executive Order 13861)

Stacy Murphy,

Operations Manager.

[FR Doc. 2019–13287 Filed 6–20–19; 8:45 am]

BILLING CODE 3270–F9–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–332, OMB Control No. 3235–0378]

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 F–8

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 this request for extension of the previously approved collection of information discussed below.

Form F–8 (17 CFR 239.38) may be used to register securities of certain Canadian issuers under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that will be used in an exchange offer or business combination. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. We estimate that Form F–8 takes approximately one hour per response to prepare and is filed by approximately 5 respondents. We estimate that 25% of one hour per response (15 minutes) is prepared by the company for a total annual reporting burden of one hour (15 minutes/60 minutes per response × 5 responses = 1.25 hours rounded to nearest whole number).

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 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: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting 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: June 18, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–13280 Filed 6–20–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–255, OMB Control No. 3235–0305]

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 13e–1

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 this request for extension of the previously approved collection of information discussed below.

Rule 13e–1 (17 CFR 240.13e–1) under the Securities Exchange Act of 1934 (U.S.C. 78 *et seq.*) makes it unlawful for an issuer who has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Exchange Act to purchase any of its equity securities during the tender offer, unless it first files a statement with the Commission containing information required by the rule. This rule is in keeping with the Commission's statutory responsibility to prescribe rules and regulations that are necessary for the protection of investors. Public companies are the respondents. We estimate that it takes approximately 10 burden hours per response to provide the information required under Rule 13e–1 and that the information is filed by approximately 10 respondents. We estimate that 25% of the 10 hours per response (2.5 hours) is prepared by the company for a total annual reporting burden of 25 hours (2.5 hours per response × 10 responses).

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 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: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting 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: June 18, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–13281 Filed 6–20–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–069, OMB Control No. 3235–0069]

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:
Industry Guides

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 this requests for extension of the previously approved collection of information discussed below.

Industries Guides are used by registrants in certain industries as disclosure guidelines to be followed in presenting information to investors in registration statements and reports under the Securities Act (15 U.S.C. 77a *et seq.*) and Exchange Act (15 U.S.C. 78a *et seq.*). The paperwork burden from the Industry Guides is imposed through the forms that are subject to the disclosure requirements in the Industry Guides and is reflected in the analysis of these documents. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, the Commission estimates the total annual burden imposed by the Industry Guides to be one hour. The information required by the Industry Guides is filed on occasion and is mandatory. All information is provided to the public. The Industry Guides do not directly impose any disclosure burden.

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 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: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting 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: June 18, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–13283 Filed 6–20–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86121; File No. SR–NYSEArca–2019–42]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

June 17, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 3, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to modify the per share credit associated with the Retail Order Step-Up Tier 2. The Exchange proposes to implement the fee change effective June 3, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently provides credits to ETP Holders, including Market Makers, who enter Retail Orders [4] on the Exchange.[5] The Exchange has multiple levels of such credits that are based on an ETP Holder's [6] trading volume of Retail Orders on the Exchange. The Exchange proposes to amend the Fee Schedule to decrease the per share credit under the Retail Order Step-Up Tier 2 for displayed liquidity in Retail Orders. The Exchange proposes to implement the fee change effective June 3, 2019.

Background

The Exchange operates in a highly competitive environment. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [7]

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive." [8] Indeed, equity trading is currently dispersed across 13 exchanges,[9] 32 alternative trading systems,[10] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[11] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first quarter of 2019, the Exchange averaged less than 9% market share of executed volume of equity trades.[12] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes.

The competition for Retail Order flow is even more stark, particularly as it relates to exchange versus off-exchange venues. For example, the Exchange examined Rule 606 disclosures from three prominent retail brokerages: E-Trade, TD Ameritrade and Charles Schwab. For securities listed on the New York Stock Exchange LLC in the first quarter of 2019, TD Ameritrade routed 80% of its limit orders to off-exchange venues.[13] Similarly, E-Trade Financial and Charles Schwab routed more than 77% and more than 90%,[14] respectively, of its limit orders to off-exchange venues.

The Exchange thus needs to compete in the first instance with non-exchange venues for Retail Order flow, and with the 12 other exchange venues for that Retail Order flow that is not directed off-exchange. This competition is particularly acute for non-marketable Retail Orders, *i.e.,* Retail Orders that provide liquidity, and even more fiercely for non-marketable Retail Orders that provide *displayed* liquidity on an exchange. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for Retail Order flow, because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

To respond to this competitive environment, the Exchange has established Retail Order Step-Up tiers, which are designed to provide an incentive for ETP Holders to route Retail Orders that provide displayed liquidity to the Exchange by providing higher credits correlated to an ETP Holder's higher trading volume in Retail Orders on the Exchange. Specifically, to qualify for the Retail Order Step-Up Tier 2, an ETP Holder must:

(1) submit an average daily share volume per month of resting limit orders (*i.e.,* provide liquidity) in an amount equal to or greater than 1.10% or more of US CADV,[15] and

(2) execute during the month, Retail Orders with a time-in-force of Day that is an increase of 0.35% or more of the US CADV from the ETP Holder's April 2018 ADV, taken as a percentage of US CADV.

Currently, if an ETP Holder meets the Retail Order Step-Up Tier 2 qualifications, such ETP Holder is eligible to earn a credit of $0.0038 per share for Retail Orders in Tape A, Tape B and Tape C Securities that provide displayed liquidity to the Book.

Proposed Rule Change

The Exchange proposes to reduce the credit that would be paid to an ETP

[4] A Retail Order is an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization ("RMO"), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Securities Exchange Act Release No. 74947 (May 13, 2015), 80 FR 28735 (May 19, 2015) (SR–NYSEArca–2015–39). RMO is defined in Rule 7.44–E(a)(2) as an ETP Holder that is approved by the Exchange to submit Retail Orders. This reference to Retail Orders in the Retail Order Step-Up Tier 2 qualifications means orders that are not executed in the Retail Liquidity Program.

[5] *See* Retail Order Tier, Retail Order Step-Up Tier 1 and Retail Order Step-Up Tier 2 on the Fee Schedule at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.*

[6] All references to ETP Holders in connection with the Retail Order Step-Up Tiers include Market Makers.

[7] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[8] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) ("Transaction Fee Pilot").

[9] *See* Cboe U.S Equities Market Volume Summary at *https://markets.cboe.com/us/equities/market_share.*

[10] *See* FINRA ATS Transparency Data (May 6, 2019), *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of April 30, 2019, only 32 are currently trading. A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[11] *See* Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), available at *http://markets.cboe.com/us/equities/market_share/.*

[12] Based on Cboe U.S. Equities Market Volume Summary, the Exchange's market share of intraday trading (excluding auctions) for the months of January 2019, February 2019 and March 2019 was 9.01%, 8.33% and 9.02%, respectively.

[13] *See https://www.tdameritrade.com/retail-en_us/resources/pdf/AMTD2054.pdf.*

[14] *See https://content.etrade.com/etrade/powerpage/pdf/OrderRouting11AC6.pdf. See also https://www.schwab.com/public/schwab/nn/legal_compliance/important_notices/order_routing.html.*

[15] US CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV.

Holder that qualifies for the Retail Order Step-Up Tier 2 to $0.0035. To date, only one ETP Holder has qualified for the Retail Order Step-Up Tier 2 rates. The proposed change would reduce the differences in credits available to Retail Orders that provide displayed liquidity on the Exchange from ETP Holders qualifying for this tier versus the credits available to Retail Orders that provide displayed liquidity on the Exchange from other ETP Holders. The Exchange believes that by lowering the credit available under this tier, it would be more closely align with the credits available for other Retail Orders that provide liquidity on the Exchange.

With this proposed change, the following credits would be available to ETP Holders that provide liquidity in Retail Orders.[16]

Tier	Credit for providing liquidity
Basic Rate	$0.0030 (all Tapes).
Retail Order Tier	$0.0033 (all Tapes).
Retail Order Step-Up Tier 1	$0.0033 (all Tapes).
Retail Order Step-Up Tier 2	$0.0035 (all Tapes) (displayed liquidity).

As noted above, under the Retail Order Step-Up Tier 1, an ETP Holder that meets the applicable qualifications is eligible for a credit of $0.0033 per share for Retail Orders that provide liquidity to the Book. The Exchange believes that the continued difference in per share credit that would be available under the Retail Order Step-Up Tier 2 ($0.0035) as compared to both the Retail Order Tier ($0.0033) and the Retail Order Step-Up Tier 1 ($0.0033) would continue to promote the display of a greater number of Retail Orders on the Exchange.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[18] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons.

As noted above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [20] Indeed, equity trading is currently dispersed across 13 exchanges,[21] 32 alternative trading systems,[22] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[23] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first quarter of 2019, the Exchange averaged less than 9% market share of executed volume of equity trades (excluding auction volume).[24]

As noted above, the competition for Retail Order flow is stark given the amount of retail limit orders that are routed to non-exchange venues. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. This competition is particularly acute for non-marketable, or limit, retail orders, *i.e.,* retail orders that can provide liquidity on an exchange. That competition is even more fierce for retail limit orders that provide *displayed* liquidity on an exchange. Accordingly, competitive forces constrain exchange transaction fees, particularly as they relate to competing for retail orders.

The Exchange believes that the proposed change is reasonable because the new, lower credit under the Retail Order Step-Up Tier 2 would continue to encourage ETP Holders to send Retail Orders to the Exchange to qualify for the pricing tier. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting Retail Order flow that provides displayed liquidity on an exchange. The Exchange believes it is reasonable to continue to provide a higher credit for Retail Orders that provide displayed liquidity if an ETP Holder meets the qualifications for the Retail Order Step-Up Tier 2.

The Exchange further believes it is an equitable allocation of reasonable fees to reduce the credit that would be available under the Retail Order Step-Up Tier 2 because it would reduce the difference in credits available for Retail Orders that provide liquidity, while still providing an increased credit to provide an incentive for ETP Holders to route *displayed* liquidity to the Exchange.

Further, given the competitive market for attracting Retail Order flow, the Exchange notes that with this proposed rule change, the Exchange's pricing for

[16] The Exchange's Fee Schedule is available here: *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[20] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final rule).

[21] *See* Cboe U.S Equities Market Volume Summary at *https://markets.cboe.com/us/equities/market_share*.

[22] *See* FINRA ATS Transparency Data (May 6, 2019), *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of April 30, 2019, only 32 are currently trading. A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[23] *See* Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), available at *http://markets.cboe.com/us/equities/market_share/.*

[24] Based on Cboe U.S. Equities Market Volume Summary, the Exchange's market share of intraday trading (excluding auctions) for the months of January 2019, February 2019 and March 2019 was 9.01%, 8.33% and 9.02%, respectively.

Retail Orders would be comparable to credits currently in place on other exchanges that the Exchange competes with for order flow. For example, the Nasdaq Stock Market LLC (''Nasdaq'') provides its members with a credit of $0.0033 per share if such member has an 85% add to total volume (adding liquidity and removing liquidity) ratio during a billing month.[25] Cboe BZX Exchange, Inc. (''BZX'') provides its members with a credit of $0.0032 per share for retail orders that add liquidity to that market.[26] Also, until recently, the Exchange's current credit of $0.0038 per share was comparable to the Retail Volume Tier that was in place on Cboe EDGX Exchange, Inc. (''EDGX''), which provided members of that exchange a credit of $0.0037 per share. EDGX recently eliminated the Retail Volume Tier.[27] This proposed rule change is a competitive response to the EDGX filing, and lowers the credit by 9% from the current level.

The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of Retail Orders transacted on the Exchange by ETP Holders which would benefit all market participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would apply to all ETP Holders on an equal and non-discriminatory basis. The Exchange further believes that the proposed change is equitable and not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume in Retail Orders. The Exchange notes that currently 12 firms submit Retail Orders that add liquidity on the Exchange and of those 12 firms, just one qualifies for the Retail Order Step-Up Tier 2 when one or more of the other 11 firms could achieve the tier and qualify for the same credits and fees if those firms directed more of their Retail Orders to the Exchange.

Further, the Exchange notes that, with this proposed rule change, the difference between the highest credit provided for Retail Orders, $0.0035 per share, and the credit for Retail Orders that do not qualify for any of the Retail Order pricing tiers, $0.0030 per share, is $0.0005, or 15%, which the Exchange believes is small given the requirements that ETP Holders are required to meet to qualify for the higher credit. Similarly, with this proposed rule change, the difference in the highest credit for Retail Orders, $0.0035 per share, and the credit provided for Retail Orders to those ETP Holders qualifying for the Retail Order Tier or Retail Order Step-Up Tier 1, $0.0033 per share, would only be $0.0002 per share, or 6%. Therefore, the Exchange believes the proposed change to the Retail Order Step-Up Tier 2 pricing tier is equitable and not unfairly discriminatory because it is available to all ETP Holders on an equal basis and provides discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. In today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and while only one ETP Holder has qualified to date for these rates, the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. This aspect of the proposed rule change also is consistent with the Act because all similarly situated ETP Holders would pay the same rate, as is currently the case, and because all ETP Holders, would be eligible to qualify for the rates by satisfying the related threshold, where applicable. Furthermore, the submission of Retail Orders is optional for ETP Holders in that they could choose whether to submit Retail Orders and, if they do, the extent of its activity in this regard.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[28] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [29]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed reduced credit would continue to incentivize market participants to submit orders that qualify as Retail Orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. The Exchange notes that for the months of January 2019, February 2019 and March 2019, the Exchange's

[25] *See* Nasdaq Price List, Rebate to Add Displayed Designated Retail Liquidity, at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[26] *See* BZX Fee Schedule, Fee Codes and Associated Fees, at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[27] *See* Securities Exchange Act Release No. 85852 (May 14, 2019), 84 FR 22919 (May 20, 2019) (SR–CboeEDGX–2019–030).

[28] 15 U.S.C. 78f(b)(8).

[29] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

market share of intraday trading (excluding auctions) was 9.01%, 8.33% and 9.02%, respectively.[30] In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[31] of the Act and subparagraph (f)(2) of Rule 19b–4[32] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[33] of the Act to determine whether the proposed rule change 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–NYSEArca–2019–42 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–NYSEArca–2019–42. 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–NYSEArca–2019–42 and should be submitted on or before July 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–13118 Filed 6–20–19; 8:45 am]

BILLING CODE 8011–01–P

[30] *See* note 12, *supra*.

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(2).

[33] 15 U.S.C. 78s(b)(2)(B).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86122; File No. SR–NYSEArca–2019–43]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

June 17, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 3, 2019, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 the NYSE Arca Equities Fees and Charges ("Fee Schedule") to modify the per share credits associated with the Step Up Tier 4. The Exchange proposes to implement the fee changes effective June 3, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to modify the per share credits available for ETP Holders (including Market Makers) that provide displayed liquidity under the Step Up Tier 4. The Exchange currently provides credits to ETP Holders [4] who submit orders that provide displayed liquidity on the Exchange. The Exchange currently has multiple levels of credits for orders that provide displayed liquidity that are based on the amount of volume of such orders that ETP Holders send to the Exchange. The purpose of this proposed rule change is to increase the credit for providing displayed liquidity that would be paid to ETP Holders that qualify for the Step Up Tier 4. The Exchange proposes to implement the fee changes effective June 3, 2019.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [5]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [6] Indeed, equity trading is currently dispersed across 13 exchanges,[7] 32 alternative trading systems,[8] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[9] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first quarter of 2019, the Exchange averaged less than 9% market share of executed volume of equity trades.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange.

In response to this competitive environment, the Exchange has already established Step Up Tiers 1–4, which are designed to encourage ETP Holders that provide displayed liquidity on the Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. In order to provide an incentive for ETP Holders to direct providing displayed order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Under the Step Up Tier 4, if an ETP Holder increases its providing liquidity on the Exchange by a specified percentage over the level that such ETP Holder provided liquidity in January 2019, it is eligible to earn higher credits for providing displayed liquidity. Specifically, to qualify for the credits under the Step Up Tier 4, an ETP Holder must directly execute providing average daily volume (ADV) per month that is an increase of no less than 0.70% of US CADV for that month over the ETP Holder's providing ADV in January 2019, taken as a percentage of US CADV.

Currently, if an ETP Holder meets these Step Up Tier 4 qualifications, such ETP Holder is eligible to earn a credit of:

- $0.0031 per share for orders that provide displayed liquidity to the Book in Tape A Securities, and
- $0.0032 per share for orders that provide displayed liquidity to the Book in Tape B and Tape C Securities.[11]

Proposed Rule Change

With this proposed rule change, the Exchange proposes to increase the credits available for ETP Holders that qualify for the Step Up Tier 4 as follows:

- $0.0033 per share for orders that provide displayed liquidity to the Book in Tape A Securities;
- $0.0034 per share for orders that provide displayed liquidity to the Book in Tape B Securities; and
- $0.0033 per share for orders that provide displayed liquidity to the Book in Tape C Securities.

The Exchange is not proposing to change any of the requirements to qualify for the Step Up Tier 4.

With this proposed rule change, the following credits would be available to ETP Holders that provide increased levels of displayed liquidity on the Exchange:

Tier	Credit for providing displayed liquidity
Step Up Tier	$0.0030 (Tape A). $0.0023 (Tape B). $0.0031 (Tape C).
Step Up Tier 2	$0.0028 (Tape A and C). $0.0022 (Tape B).
Step Up Tier 3	$0.0025 (Tape A and C). $0.0022 (Tape B).
Step Up Tier 4	$0.0033 (Tape A and C). $0.0034 (Tape B).

The goal of the proposed change to the Step Up Tier 4 pricing tier is to incentivize ETP Holders to increase the orders sent to the Exchange that would provide displayed liquidity, which would support the quality of price discovery on the Exchange and promote market transparency. This tier is available to all ETP Holders. However, to date, not one ETP Holder has qualified for the Step Up Tier 4.

The Exchange proposes to increase the credits available under the established Step Up Tier 4 to provide an incentive for ETP Holders to send order flow to qualify for this tier. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting displayed providing liquidity. Because the Step Up Tier 4 pricing tier has a singular

[4] All references to ETP Holders in connection with the Step Up Tier 4 include Market Makers.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)

[6] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final rule).

[7] *See* Cboe U.S Equities Market Volume Summary at *https://markets.cboe.com/us/equities/market_share.*

[8] *See* FINRA ATS Transparency Data (May 6, 2019), *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of April 30, 2019, only 32 are currently trading. A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), available at *http://markets.cboe.com/us/equities/market_share/.*

[10] Based on Cboe U.S. Equities Market Volume Summary, the Exchange's market share of intraday trading (excluding auctions) for the months of January 2019, February 2019 and March 2019 was 9.01%, 8.33% and 9.02%, respectively.

[11] *See* Securities Exchange Act Release No. 85311 (March 14, 2019), 84 FR 10348 (March 20, 2019) (SR–NYSEArca–2019–10).

requirement for ETP Holders, *i.e.,* providing an increased liquidity over that ETP Holder's baseline providing volume, the Exchange believes that the proposed increased credits would provide an incentive for ETP Holders to route additional displayed providing liquidity to the Exchange to qualify for the higher credit.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons.

As noted above, the Exchange operates in highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [15] Indeed, equity trading is currently dispersed across 13 exchanges,[16] 32 alternative trading systems,[17] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[18] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first quarter of 2019, the Exchange averaged less than 9% market share of executed volume of equity trades (excluding auction volume).[19] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed change is reasonable because the higher credits under the Step Up Tier 4 would continue to allow ETP Holders that meet the requirement of the pricing tier to receive increased per share credits. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides displayed liquidity on an exchange. The Exchange believes it is reasonable to continue to provide a higher credit for orders that provide displayed liquidity if an ETP Holder meets the qualification for the Step Up Tier 4. Because no ETP Holder to date has qualified for the Step Up Tier 4, the Exchange believes the proposed increased credits are reasonable as they would provide an additional incentive for ETP Holders to qualify for this established tier and direct their order flow to the Exchange and provide meaningful added levels of displayed liquidity, thereby contributing to the depth and market quality on the Exchange. The proposed increased credits would also enable the Exchange to compete for order flow.

As noted above, no ETP Holder currently qualifies for the Step Up Tier 4 pricing tier. Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders qualifying for this tier. However, the Exchange believes the proposed higher credits would provide an incentive for ETP Holders to submit additional adding liquidity to qualify for the higher credits.

The Exchange believes that the proposed increased credit is equitable and not unfairly discriminatory because the magnitude of the additional credit is not unreasonably high in comparison to the credit paid with respect to other pricing tiers noted in the table above, and in comparison to the credits paid by other exchanges for orders that add liquidity. For example, ETP Holders that meet the requirement under Tier 1 currently receive credits of $0.0031 per share in Tape A securities, $0.0023 per share in Tape B securities, and $0.0032 per share in Tape C Securities. ETP Holders that do not qualify for any of the Exchange's tiers currently receive a credit of $0.0020 per share in all tapes, and would continue to receive such credit for adding liquidity.

With respect to credits paid by other exchanges, the Cboe BZX Exchange, Inc. (''BZX'') provides its members that have an adding ADV of 1.25% or more of US CADV a credit of $0.0032 per share for adding liquidity.[20] Additionally, the Nasdaq Stock Market LLC (''Nasdaq'') provides a credit of $0.00305 per share for orders that add liquidity on that market for members that have greater than 1.25% add of US CADV. However, Nasdaq members can receive additional credits, as follows:

- An additional credit of $0.0002 per share by meeting the requirements of Nasdaq's Qualified Market Maker Program;
- An additional credit of $0.0001 per share in Tape B securities by having greater than 0.10% added in Tape B securities of Tape B CADV; and
- An additional credit of $0.00005 per share in Tape B securities by having greater than 1.75% added of US CADV of which 0.60% or greater is in Tape B securities.

Nasdaq members meeting all of the above requirements would receive a combined credit of $0.00325 per share in Tape A and Tape C securities, and $0.0034 per share in Tape B securities.[21]

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[15] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final rule).

[16] *See* Cboe U.S. Equities Market Volume Summary at *https://markets.cboe.com/us/equities/market_share.*

[17] *See* FINRA ATS Transparency Data (May 6, 2019), *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of April 30, 2019, only 32 are currently trading. A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[18] *See* Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), available at *http://markets.cboe.com/us/equities/market_share/.*

[19] Based on Cboe U.S. Equities Market Volume Summary, the Exchange's market share of intraday trading (excluding auctions) for the months of January 2019, February 2019 and March 2019 was 9.01%, 8.33% and 9.02%, respectively.

[20] *See* BZX Fee Schedule, Footnote 1, Add Volume Tiers, Tier 6, at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[21] *See https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

The Exchange believes it is not unfairly discriminatory to provide increased per share credits as the proposed increased credits would be provided on an equal basis to all ETP Holders that add liquidity by meeting the Step Up Tier 4 requirement. Further, the Exchange believes the proposed increased per share credits would incentivize ETP Holders that meet the current Tier 1 requirement and send more of their orders to the Exchange to qualify for increased credits. The proposed increased per share credits would apply equally to all ETP Holders as each would be required to execute providing ADV per month that is an increase of no less than 0.70% of US CADV over their January baseline taken as a percentage of US CADV, regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[22] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [23]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed increased credits would continue to incentivize market participants to direct providing displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders, to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. The Exchange notes that for the months of January 2019, February 2019 and March 2019, the Exchange's market share of intraday trading (excluding auctions) was 9.01%, 8.33% and 9.02%, respectively.[24] In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed change is designed to provide the public and investors with a Schedule of Fees and Rebates that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [25] of the Act and subparagraph (f)(2) of Rule 19b–4 [26] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [27] of the Act to determine whether the proposed rule change 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–NYSEArca-2019–43 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–NYSEArca–2019–43. 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

[22] 15 U.S.C. 78f(b)(8).

[23] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[24] *See* note 10, *supra.*

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(2).

[27] 15 U.S.C. 78s(b)(2)(B).

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–NYSEArca–2019–43 and should be submitted on or before July 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–13123 Filed 6–20–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86126; File No. SR–NYSENAT–2019–14]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates

June 17, 2019.

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 June 3, 2019, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III 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 its Schedule of Fees and Rebates to revise the quoting requirements in order for ETP Holders to qualify for Adding Tier 1, Adding Tier 2 and Adding Tier 3 fees. The Exchange also proposes non-substantive changes to the presentation of the Adding Tiers. The proposed rule change is available on the Exchange's website at *www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees and Rebates (''Fee Schedule'') to reduce the number of securities in which an ETP Holder must quote to qualify for Adding Tier 1, Adding Tier 2 and Adding Tier 3 fees. Specifically, the Exchange proposes to lower the number of securities in which an ETP Holder must quote to qualify for Adding Tiers 1–3 by 50 securities across the board. The Exchange also proposes non-substantive changes to the presentation of the Adding Tiers on the Fee Schedule. The Exchange proposes to implement the rule change on June 3, 2019.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [3]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [4] Indeed, equity trading is currently dispersed across 13 exchanges,[5] 32 alternative trading systems,[6] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether excluding or including auction volume).[7] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in May 2019, the Exchange had 1.3% market share of executed volume of equity trades (excluding auction volume).[8] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange utilizes a ''taker-maker'' or inverted fee model to attract orders that provide liquidity at the most competitive prices. Under the taker-maker model, offering rebates for taking liquidity increases the likelihood that market participants will send orders to the Exchange to trade with liquidity providers' orders. This increased taker order flow provides an incentive for market participants to send orders that provide liquidity. The Exchange charges fees for order flow that provides liquidity. These fees are reasonable due

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[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[4] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[5] *See* Cboe Global Markets, U.S. Equities Market Volume Summary (May 31, 2019), available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[6] *See* FINRA ATS Transparency Data (May 6, 2019), *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* Although 54 alternative trading systems were registered with the Commission as of April 30, 2019, only 32 are currently trading. A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/files/data/alternative-trading-system-ats-list/atslist043019.pdf.*

[7] *See* Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), available at *http://markets.cboe.com/us/equities/market_share/.*

[8] *See id.*

to the additional marketable interest (in part attracted by the exchange's rebate to remove liquidity) with which those order flow providers can trade.

The Exchange sets forth the fees it charges for adding liquidity in four Adding Tiers that establish minimum quoting or volume requirements that an ETP Holder must satisfy in order to be eligible for specific corresponding fees. These quoting and volume requirements are based on the type of liquidity (*i.e.,* displayed, non-displayed, BBO setting, or MPL) and the type of security (*i.e.,* whether it is a Tape A, B or C security). In addition, the Exchange offers two ''step up'' Adding Tiers that do not have quoting or minimum volume requirements but require ETP Holders to provide additional incremental liquidity, thus ''stepping up'' their liquidity provision, in order to qualify for better pricing based on smaller amounts of liquidity than are required to qualify for Adding Tiers 1–3. The different tiers are designed to provide an incentive for order flow providers to add liquidity on the Exchange because the fees are lower for the tiers that have higher quoting or volume requirements. ETP Holders that do not send order flow to the Exchange to qualify for the Adding Tier rates would receive the rates set forth under item A (General Rates) of the Fee Schedule.

To respond to this competitive environment, the Exchange proposes to adjust its pricing to reduce the number of securities in which an ETP Holder must quote in order to qualify for the Adding Tier 1–3 fees. The Exchange's market share of intraday trading (*i.e.,* excluding auctions) declined from 1.5% for the month of March 2019 to 1.3% for the month of May 2019.[9] The proposed fee change is designed to attract additional order flow to the Exchange by making it easier to qualify for the respective tiered rates.

Proposed Rule Change

As described in more detail below, in order to qualify for the Adding Tiers 1–3 fees, an ETP Holder must be quoting at a price that is equal to the NBBO a specified percentage of the time, in a specific number of securities.[10] The Exchange proposes to lower the number of securities in which an ETP Holder must quote to qualify for Adding Tiers 1–3 by 50 securities across the board. Without having a view of ETP Holder's activity on other markets and off-exchange venues, the Exchange believes that this reduction in the number of securities would be significant enough to incentivize market participants to increase their quoting on the Exchange to meet the new lower requirement, and thus be eligible for lower fees, and submit additional adding liquidity to the Exchange.

Adding Tier 1

Under current Adding Tier 1, ETP Holders that add liquidity to the Exchange in securities with a per share price of $1.00 or more and that:

(i) Quote at the NBBO[11] at least 5% of the time in 1,000 or more securities on an average daily basis, calculated monthly, and have an average daily volume (''ADV'') of adding liquidity as a percentage of US consolidated ADV (''CADV'') of 0.20% or more, or

(ii) quote at the NBBO at least 5% of the time in 2,500 or more securities on an average daily basis, calculated monthly, and have an ADV of adding liquidity as a percentage of US CADV of 0.10% or more,

would be charged the following fees:

- $0.0008 per share for adding displayed orders in Tape B and C securities and $0.0011 per share in Tape A securities;
- $0.0008 per share for orders that set a new Exchange BBO in Tape B and C securities and $0.0011 per share in Tape A securities;
- $0.0010 per share for adding non-displayed orders in Tape B and C securities and $0.0013 per share in Tape A securities; and
- $0.0005 per share for MPL orders.

The Exchange proposes to amend the quoting requirements for both alternative methods described in (i) and (ii) above to qualify for the tier by reducing the number of securities in which the ETP Holder must quote. As proposed, the first alternative would require ETP Holders to quote at least 5% of the time at the NBBO in 950 (instead of 1,000) or more securities on an average daily basis, calculated monthly, while the second would require ETP Holders to quote at least 5% of the time at the NBBO in 2,450 (instead of 2,500) or more securities on an average daily basis, calculated monthly. The fees charged under the Adding Tier 1 would not change.

Adding Tier 2

Under current Adding Tier 2, ETP Holders that add liquidity to the Exchange in securities with a per share price of $1.00 or more and that quote at least 5% of the time at the NBBO in 2000 or more securities on an average daily basis, calculated monthly, and have an ADV of adding liquidity as a percentage of US CADV of 0.10% or more, are charged the following fees:

- $0.0012 per share for adding displayed orders in Tape B and C securities and $0.0015 per share in Tape A securities;
- $0.0012 per share for orders that set a new Exchange BBO in Tape B and C securities and $0.0015 per share in Tape A securities;
- $0.0014 per share for adding non-displayed orders in Tape B and C securities and $0.0017 per share in Tape A securities; and
- $0.0005 per share for MPL orders, which would remain unchanged.

The Exchange proposes to reduce the number of securities in which the ETP Holder must quote to qualify for the tier, and would require ETP Holders to quote at least 5% of the time at the NBBO in 1,950 (instead of 2,000) or more securities on an average daily basis, calculated monthly. The fees charged under the Adding Tier 2 would not change.

Adding Tier 3

Under current Adding Tier 3, ETP Holders that add liquidity to the Exchange in stocks with a per share price of $1.00 or more and that quote at least 5% of the NBBO in 600 or more securities on an average daily basis, calculated monthly, are charged the following fees:

- $0.0015 per share for adding displayed orders in Tape B and C securities and $0.0017 per share in Tape A securities;
- $0.0015 per share for orders that set a new Exchange BBO in Tape B and C securities and $0.0017 per share in Tape A securities;
- $0.0017 per share for adding non-displayed orders in Tape B and C securities and $0.0019 per share in Tape A securities; and
- $0.0005 per share for MPL orders, which would remain unchanged.

The Exchange proposes to reduce the number of securities in which the ETP Holder must quote to qualify for the tier by 50, and would require ETP Holders to quote at least 5% of the NBBO in 550 (instead of 600) or more securities on an average daily basis, calculated monthly. The fees charged under the Adding Tier 3 would not change.

Application of Proposed Fee Change

The proposed rule change is designed to provide order flow providers with an incentive to route liquidity-providing order flow to the Exchange. As described above, ETP Holders with liquidity-providing order flow have a

[9] *See id.*

[10] The Adding Tier 4 volume requirements are currently waived. *See* footnote * in the current Fee Schedule. The Exchange proposes no changes to Adding Tier 4.

[11] *See* footnote ** in the current Fee Schedule.

choice of where to send that order flow. The Exchange believes that if it reduces the requirements to qualify for tiers that have lower charges, more ETP Holders will choose to route their liquidity-providing order flow to the Exchange to qualify for those tiers. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but believes that more than 12 ETP Holders could qualify for these tiers if they so choose.[12] Additional liquidity-providing order flow benefits all market participants because it provides greater execution opportunities on the Exchange.

For example, assume an ETP Holder averages an ADV of 17.5 million shares of adding liquidity in a month where a billing month of US CADV is 7 billion, or 0.25% of CADV. If that ETP Holder quotes at least 5% of the NBBO in 975 securities on an average daily basis, calculated monthly, that ETP Holder would meet the proposed requirement of at least 950 securities to qualify for Adding Tier 1. Prior to the proposed change, that ETP Holder would fall short of the requirement for Tier 1, and would have instead qualified for Adding Tier 3. With this proposed change, this ETP Holder would now be eligible for Adding Tier 1 fees, which, except for MPL Adding fees, are lower than the Adding Tier 3 fees. The Exchange believes that charging lower fees would create an incentive for liquidity providers to direct order flow to the Exchange, which in turn would create additional execution opportunities for all market participants.

Proposed Non-Substantive Changes

The Exchange also proposes a non-substantive change to the presentation of the Adding Tiers under item B (Tiered Rates) of the Fee Schedule. The Exchange proposes a horizontal presentation similar to the presentation of the Taking Tiers rather than the current vertical presentation. The Exchange also proposes to simplify the presentation by using sub-titles to identify the type of liquidity (*i.e.,* displayed, non-displayed, BBO setting, and MPL) and then listing the corresponding fees under each category. The proposed substantive changes described above would be included in the new presentation of the Tiered Rates. The proposed changes would appear as follows in the Fee Schedule:

Tier requirement	Adding fees (per share)
Adding Tier 1	
Either: (i) *at least 5% of the NBBO ** in 950 or more symbols on an average daily basis, calculated monthly and 0.20% or more Adding ADV as a % of US CADV, or* (ii) *at least 5% of the NBBO ** in 2,450 or more symbols on an average daily basis, calculated monthly and 0.10% or more Adding ADV as a % of US CADV.*	*Displayed liquidity:* *—Tapes B and C: $0.0008.* *—Tape A: $0.0011.* *Non-displayed liquidity:* *—Tapes B and C: $0.0010.* *—Tape A: $0.0013.* *BBO setting:* *—Tapes B and C: $0.0008.* *—Tape A: $0.0011.* *MPL:* *—All Tapes: $0.0005.*
Adding Tier 2	
*At least 5% of the NBBO ** in 1,950 or more symbols on an average daily basis, calculated monthly and 0.10% or more Adding ADV as a % of US CADV.*	*Displayed liquidity:* *—Tapes B and C: $0.0012.* *—Tape A: $0.0015.* *Non-displayed liquidity:* *—Tapes B and C: $0.0014.* *—Tape A: $0.0017.* *BBO Setting:* *—Tapes B and C: $0.0012.* *—Tape A: $0.0015.* *MPL:* *—All Tapes: $0.0005.*
Adding Tier 3	
*At least 5% of the NBBO ** in 550 or more symbols on an average daily basis, calculated monthly*	*Displayed liquidity:* *—Tapes B and C: $0.0015.* *—Tape A: $0.0017.* *Non-displayed liquidity:* *—Tapes B and C: $0.0017.* *—Tape A: $0.0019.* *BBO Setting:* *—Tapes B and C: $0.0015.* *—Tape A: $0.0017.* *MPL:* *—All Tapes: $0.0005.*

[12] In the month of May 2019, 12 ETP Holders quoted at least 5% of the time at the NBBO in at least 10 securities.

Tier requirement	Adding fees (per share)
Adding Tier 4*	
0.015% or more Adding ADV as a % of US CADV	*Displayed liquidity:* *—Tapes B and C: $0.0023.* *—Tape A: $0.0025.* *Non-displayed liquidity:* *—Tapes B and C: $0.0025.* *—Tape A: $0.0027.* *BBO Setting:* *—Tapes B and C: $0.0021.* *—Tape A: $0.0023.* *MPL:* *—All Tapes: $0.0005.*
Step Up Adding Tier 1	
0.07% or more Adding ADV as a % of US CADV over the ETP Holder's Adding ADV as a % of US CADV in November 2018.	*Displayed liquidity:* *—Tapes B and C: $0.0012.* *—Tape A: $0.0015.* *Non-displayed liquidity:* *—Tapes B and C: $0.0014.* *—Tape A: $0.0017.* *BBO Setting:* *—Tape B and C: $0.0012.* *—Tape A: $0.0015.* *MPL:* *—All Tapes: $0.0005.*
Step Up Adding Tier 2	
0.04% or more Adding ADV as a % of US CADV over the ETP Holder's Adding ADV as a % of US CADV in November 2018.	*Displayed liquidity:* *—Tape B and C: $0.0015.* *—Tape A: $0.0018.* *Non-displayed liquidity:* *—Tapes B and C: $0.0017.* *—Tape A: $0.0020.* *BBO Setting:* *—Tapes B and C: $0.0015.* *—Tape A: $0.0018.* *MPL:* *—All Tapes: $0.0005.*

The Exchange believes the proposed change will add clarity to the Exchange's rules by making the Fee Schedule easier to read. Other than the changes to the Adding Tier quoting qualifications described above, the Exchange proposes no other substantive changes to the Adding Tiers.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that lowering the number of securities in which ETP Holders are required to quote at least 5% of the time at the NBBO on an average daily basis, calculated monthly, for Adding Tiers 1–3 provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons.

As noted above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [15]

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive." [16] Indeed, equity trading is currently dispersed across 13 exchanges,[17] 32 alternative trading systems,[18] and numerous broker-dealer

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) & (5).

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[16] *See* Transaction Fee Pilot, 84 FR at 5253.

[17] *See* Cboe Global Markets, U.S. Equities Market Volume Summary (May 31, 2019), available at *http://markets.cboe.com/us/equities/market_share/*. *See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[18] *See* FINRA ATS Transparency Data (May 6, 2019), *available at https://otctransparency.finra.org/otctransparency/AtsIssueData*. Although 54 alternative trading systems were registered with the Commission as of April 30, 2019, only 32 are currently trading. A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/*

Continued

internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether including or excluding auction volume).[19] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in May 2019, the Exchange had 1.3% market share of executed volume of equity trades (excluding auction volume).[20] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain exchange transaction fees.

The Exchange believes the proposed change is equitable and not unfairly discriminatory because it would continue to encourage ETP Holders to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. Further, the Exchange believes that, for the reasons discussed above, lowering the quoting requirement would make it easier for liquidity providers to qualify for the fees, thereby encouraging submission of additional liquidity to the Exchange. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange notes that there are currently four (4) firms qualifying for the combined Adding Tiers 1–4 and that, based on current participation on the Exchange, no additional firms would initially qualify with the lower requirements. Without having a view of an ETP Holder's activity on other markets and off-exchange venues, the Exchange believes the proposed lower quoting requirement would provide an incentive for market participants to increase their quoting to meet the new lower requirement and submit additional adding liquidity to the Exchange. In addition, based on the profile of liquidity-providing firms generally, the Exchange believes that more than twelve (12) firms could qualify for these tiers if they choose to direct order flow to, and increase quoting on, the Exchange.

Moreover, the proposed change is equitable and not unfairly discriminatory because all qualifying ETP Holders that add liquidity to the Exchange and quote at the NBBO in each tier would be eligible for the fee by satisfying the lowered quoting thresholds, and because the lower thresholds would apply equally to all similarly situated ETP Holders. The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the different tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and while only four ETP Holders have qualified to date for these rates, the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

The Exchange also believes that the proposed non-substantive changes to the Adding Tier presentation would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency, thereby reducing potential confusion.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[21] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange by making it easier for liquidity providers to qualify for the Adding Tier 1–3 fees, thereby increasing the likelihood that market participants will send orders to the Exchange to trade with the liquidity providers' orders and thus promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small." [22]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange by reducing the number of securities that an ETP Permit holder is required to quote for Adding Tiers 1–3. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed reduced quoting requirement would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. The Exchange notes that Exchange's market share of intraday trading (excluding auctions) declined from 1.5% for the month of March 2019 to 1.3% for the month of May 2019.[23] In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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files/data/alternative-trading-system-ats-list/atslist043019.pdf.

[19] *See* Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), available at *http://markets.cboe.com/us/equities/market_share/.*

[20] *See id.*

[21] 15 U.S.C. 78f(b)(8).

[22] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[23] *See* note 9, *supra.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [24] of the Act and subparagraph (f)(2) of Rule 19b–4 [25] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change 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–NYSENAT–2019–14 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–NYSENAT–2019–14. 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 offices 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–NYSENAT–2019–14, and should be submitted on or before July 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–13115 Filed 6–20–19; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86119; File No. SR–OCC–2019–004]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving Proposed Rule Change Related to the Introduction of a New Liquidation Cost Model in the Options Clearing Corporation's Margin Methodology

June 17, 2019.

I. Introduction

On April 18, 2019, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2019–004 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to propose changes to OCC's margin methodology to introduce a new model to estimate the liquidation cost for all options and futures, as well as the securities in margin collateral.[3]

The Proposed Rule Change was published for public comment in the **Federal Register** on May 6, 2019,[4] and the Commission received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. Background

The System for Theoretical Analysis and Numerical Simulations (''STANS'') is OCC's methodology for calculating margin requirements. OCC uses the STANS methodology to measure the exposure of portfolios of options and futures cleared by OCC and of cash instruments that are part of margin collateral. STANS margin requirements are intended to cover potential losses due to price movements over a two-day risk horizon; however, the current STANS margin requirements do not cover the potential additional liquidation costs OCC may incur in closing out a defaulted Clearing Member's portfolio.[5] Closing out positions in a defaulted Clearing Member's portfolio could entail selling longs at the bid price and covering shorts at the ask price. Additionally, even well-hedged portfolios consisting of offsetting longs and shorts would require some cost to liquidate in the event of a default. The process of modeling liquidation costs is, therefore, relevant to ensuring that OCC holds

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 84 FR 19815.

[4] Securities Exchange Act Release No. 85755 (Apr. 30, 2019), 84 FR 19815 (May 6, 2019) (SR–OCC–2019–004) (''Notice of Filing''). OCC also filed a related advance notice (SR–OCC–2019–802) (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was published in the **Federal Register** on May 21, 2019. Securities Exchange Act Release No. 85863 (May 15, 2019), 84 FR 23090 (May 21, 2019) (SR–OCC–2019–802).

[5] OCC previously introduced a liquidation cost model into STANS for risk managing only long-dated options on the Standard & Poor's (''S&P'') 500 index (''SPX'') that have a tenor of three-years or more. *See* Securities Exchange Act Release No. 70719 (October 18, 2013), 78 FR 63548 (October 24, 2013) (SR–OCC–2013–16). Under the proposal described in the Proposed Rule Change, OCC would replace the existing liquidation model for long-dated SPX options with the proposed model. Long-dated SPX options, however, constituted less than 0.5 percent of open interest in SPX options open interest at the time of filing. *See* Notice of Filing, 84 FR at 19816, note 7.

sufficient financial resources to close-out the portfolio of a defaulted Clearing Member.

OCC is proposing to introduce a new model to its margin methodology to estimate the liquidation cost for all options and futures, as well as cash instruments that are part of margin collateral. According to OCC, the purpose of this proposal is to collect additional financial resources to guard against potential shortfalls in margin requirements that may arise due to the costs of liquidating the portfolio of a defaulted Clearing Member.[6] The liquidation cost charge would be an add-on to all accounts incurring a STANS margin charge. At a high level, the proposed model would estimate the cost to liquidate a portfolio based on the mid-points of the bid-ask spreads for the financial instruments within the portfolio, and would scale up such liquidation costs for large or concentrated positions that would likely be more expensive to close out.

OCC's proposed liquidation cost model would calculate liquidation costs based on risk measures, gross contract volumes, and market bid-ask spreads. As described in the Proposed Rule Change, the liquidation cost model would include the following components: (1) Calculation of liquidation costs for each sub-portfolio (as described below), which would then be aggregated at the portfolio level; (2) calculation of concentration charges that would be applied to scale-up the liquidation costs as appropriate; and (3) establishment of the liquidation cost as a floor on a Clearing Member's margin requirement.[7]

A. Liquidation Costs

The proposed model would calculate two risk-based liquidation costs for a portfolio: (1) The Vega[8] liquidation cost (''Vega LC''), and (2) the Delta[9] liquidation cost (''Delta LC''). Options products would incur both a Vega LC and a Delta LC, while Delta-one products,[10] such as futures contracts, Treasury securities, and equity securities, would incur only a Delta LC.

The process of calculating the Vega LC and the Delta LC for each portfolio would require a series of steps, beginning with the decomposition of each portfolio into a set of sub-portfolios based on the asset underlying each instrument in the portfolio. Each sub-portfolio would represent a class of instruments. As proposed, the model would include 14 potential classes of underlying assets based on the liquidity of the assets within each class.[11]

a. Vega Liquidation Cost

To calculate the Vega LC of a sub-portfolio, OCC would group contracts within a sub-portfolio into ''buckets'' based on each contract's combination of tenor and Delta.[12] OCC would then net the long and the short positions down to a single net Vega within each bucket. Next, OCC would estimate the average volatility spread (*i.e.,* the estimated bid-ask spread on implied volatility) of the contracts in each bucket.[13] The Vega LC of each bucket would be the net Vega multiplied by the average volatility spread of the bucket. The Vega LC of a sub-portfolio would be the aggregated Vega LCs of the buckets within that sub-portfolio. Similarly, the Vega LC of the full portfolio would be the aggregated Vega LCs of the sub-portfolios within that portfolio.[14]

Under the proposed model, the Vega LC calculation process could result in a portfolio-level Vega LC of zero because the process permits offsets between contracts. To prevent such a result, OCC proposes including a minimum Vega LC based on the number of contracts in each sub-portfolio. The minimum Vega LC of a sub-portfolio would be the total number of option contracts in the sub-portfolio multiplied by a fixed dollar amount.[15]

b. Delta Liquidation Cost

Similar to the Vega LC process, the model would calculate Delta LC for each sub-portfolio, which would then be aggregated at the portfolio level. OCC would first identify and net down the Delta of the positions within each sub-portfolio. For each sub-portfolio, OCC would estimate a bid-ask price spread (as a percentage). Such a percentage would represent the cost of liquidating one dollar unit of the underlying security during a period of market stress. The sub-portfolio Delta LC would be the net dollar Delta of the sub-portfolio multiplied by the bid-ask price spread percentage.[16] The portfolio-level Delta LC would be the simple sum of the sub-portfolio Delta LCs.

B. Concentration Charges

The proposed model would also address the potential risks involved in closing out large or concentrated positions in a portfolio. The size of an open position is typically measured against the relevant instrument's average daily trading volume (''ADV''). Closing out a position in excess of the ADV would be expected to increase the cost of liquidation. To account for such considerations, the proposed model incorporates a Vega concentration factor and a Delta concentration factor. The concentration factors would be used to scale the Vega LCs and the Delta LCs of each sub-portfolio and to take into account the additional risk posed by large or concentrated positions. The concentration factor could increase, but would not decrease the Vega LCs and the Delta LCs.

C. Margin Floor

As noted above, the liquidation cost charge (*i.e.,* sum of the portfolio-level Vega LC and Delta LC) would be applied as an add-on to the STANS margin requirement for each account. Because STANS margin requirements are

[6] *See* Notice of Filing, 84 FR at 19816.

[7] OCC also proposes a conforming change to its Margin Policy, which would reference OCC's model documentation.

[8] The Vega of an option represents the sensitivity of the option price to the volatility of the underlying security.

[9] The Delta of an option represents the sensitivity of the option price to the price of the underlying security.

[10] A ''Delta-one product'' refers to a product for which a change in the value of the underlying asset results in a change of the same, or nearly the same, proportion in the value of the product.

[11] For example, equity securities would be divided based on membership in commonly used market indices (*e.g.,* the S&P 100) or other market liquidity measures, into liquidity classes (which could include, but would not be limited to, High Liquid Equities, Medium Liquid Equities, and Low Liquid Equities).

[12] For example, those options contracts with a tenor of 1 month and a Delta between 0.25 and 0.75 could be grouped in one bucket within a sub-portfolio, while option contracts with a tenor of 3 month and a Delta between 0.25 and 0.75 would be grouped in another bucket. The proposed model would provide for 25 buckets (based on combinations of tenor and Delta) for each sub-portfolio.

[13] Rather than recalibrate the volatility spread of each bucket as current market conditions change, the estimated volatility spread of each bucket within a sub-portfolio would be calibrated based on data from historical periods of market stress.

[14] The process for aggregating Vega LCs, of both sub-portfolios and portfolios, under the proposed model, is based on the correlations of either the bucket or the sub-portfolio being aggregated. To simplify the portfolio-level aggregation, the proposed model would use a single correlation value across all sub-portfolios in a given portfolio rather than a correlation matrix. To account for potential errors that could arise out of such a simplification, the proposed model would require the calculation of three portfolio-level Vega LCs based on the three different correlation values (*i.e.,* minimum, maximum, and average). The portfolio Vega LC would be the highest of the three Vega LCs calculated in this manner.

[15] Specifically, the minimum cost rate would initially be set as two dollars per contract, unless the position is long and the net asset value per contract is less than $2.00. (For a typical option with a contract size of 100, this would occur if the option was priced below $0.02.)

[16] As described in the Notice of Filing, the process for determining the Delta LC of a sub-portfolio of U.S. dollar Treasury bonds would be different. Specifically, it would be based on the sum of Delta LCs across six tenor buckets. *See* Notice of Filing, 84 FR at 19818.

intended to cover potential losses due to price movements over a two-day risk horizon, the STANS requirement for well-hedged portfolios may be positive, which could result in a margin credit instead of a charge.

To account for the risk of potentially liquidating a portfolio at current (instead of two-day ahead) prices, OCC proposes to design the model such that it would not permit a margin credit to offset a portfolio's liquidation cost. Under the proposal, therefore, the final margin requirement for a portfolio could not be lower than its liquidation cost charge.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[17] After carefully considering the Proposed Rule Change, the Commission finds the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act[18] and Rule 17Ad–22(e)(6)(i) thereunder.[19]

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires that the rules of a clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[20] Based on its review of the record, the Commission believes that the proposed changes are designed to assure the safeguarding of securities and funds which are in OCC's custody or control for the reasons set forth below.

OCC manages its credit exposure to Clearing Members, in part, through the collection of collateral based on OCC's margin methodology. As noted above, OCC's current margin methodology is not designed to account for liquidation costs that OCC could incur in the process of closing out a defaulted Clearing Member's portfolio. OCC proposes to adopt a model designed to estimate the margin necessary to cover liquidation costs that OCC could incur when closing out a defaulted Clearing Member's portfolio. The Commission believes that adopting a model designed to identify and measure a risk not addressed elsewhere in OCC's margin methodology—namely, the cost to liquidate a defaulted Clearing Member's portfolio during periods of market stress—would improve OCC's margin methodology by generating margin requirements designed to more fully cover OCC's credit exposure to each of its Clearing Members.

Moreover, the Commission believes that the inclusion of concentration charges in the proposed liquidation cost model would enhance the measurement of risk described above. The cost of liquidating a defaulted Clearing Member's portfolio is, in part, a function of market prices and market depth present at the time of the Clearing Member's default. The process of liquidating on a compressed timeframe a large or concentrated position during such a period could negatively affect such market prices for OCC. In recognition of such costs, OCC proposes to use concentration factors to scale up both the Vega LCs and Delta LCs based on the size of a defaulted Clearing Member's positions relative to the average daily volume of the financial instruments in the defaulted Clearing Member's portfolio. Including concentration charges in OCC's proposed liquidation cost model would further facilitate the generation of requirements designed to more fully cover OCC's credit exposure to each of its Clearing Members.

The Commission also believes that the use of the proposed liquidation cost model to create a margin floor would improve the management of OCC's credit exposures through the collection of margin. OCC's margin methodology may produce a credit for well-hedged portfolios because it is focused on the potential losses resulting from price movements over a two-day risk horizon. OCC could, however, incur costs in the process of closing out a defaulted Clearing Member's portfolio at current prices, rather than prices two days into the future. OCC's proposal acknowledges this potential gap by requiring that a Clearing Member post, at a minimum, margin to cover the liquidation cost of its portfolio.

As discussed above, OCC proposes to identify and manage the potential cost of liquidating a defaulted Clearing Member's portfolio. OCC's estimation of such potential costs would be calibrated based on historical periods of market stress. OCC proposes to collect resources designed to cover such costs in the form of margin. Collecting additional margin to support OCC's ability to close out a default Clearing Member's portfolio during a period of market stress could reduce the potentiality that OCC would mutualize a loss arising out of the close-out process. While unavoidable under certain circumstances, reducing the potentiality of loss mutualization during periods of market stress could reduce the potential knock-on effects to non-defaulting Clearing Members, their customers and the broader options market arising out of a Clearing Member default. The Commission believes, therefore, that adoption of a liquidation cost model calibrated based on periods of market stress would be consistent with assuring the safeguarding of securities and funds which are in OCC's custody or control or for which it is responsible consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[21]

B. Consistency With Rule 17Ad–22(e)(6)(i) Under the Exchange Act

Rule 17Ad–22(e)(6)(i) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[22]

As described above, the liquidation cost that OCC could incur in the process of closing out a Clearing Member's portfolio is, in part, a function of the spread between the bid and the ask prices of financial instruments within the portfolio. The STANS methodology attempts to address potential losses resulting from changes in price over a two-day period. As described above, however, STANS is not designed to account for liquidation costs. OCC's proposed model would be designed to account for particular attributes of the products in a defaulted Clearing Member's portfolio, including the bid-ask spreads and average daily volume of such products.[23] Further, the proposal

[17] 15 U.S.C. 78s(b)(2)(C).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(6)(i).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 17 CFR 240.17Ad–22(e)(6)(i).

[23] As noted above, OCC proposes to incorporate the proposed model into its margin methodology documentation and to reference the margin add-on in its Margin Policy.

would acknowledge the purpose of the proposed liquidation cost model as distinct from the STANS methodology by using the proposed liquidation cost model as a floor on a Clearing Member's margin requirements.

OCC's proposal would be tailored to the particular attributes of products in a Clearing Member's portfolio. As described above, OCC would use the proposed model to calculate two risk-based liquidation costs for each portfolio: (1) The Vega LC and (2) the Delta LC. The Commission believes, therefore, that the adoption of the proposed liquidation cost model designed to produce margin levels commensurate with the risks of liquidating a Clearing Member's portfolio is consistent with Exchange Act Rule 17Ad–22(e)(6)(i).[24]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act [25] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[26] that the Proposed Rule Change (SR–OCC–2019–004) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–13113 Filed 6–20–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–339, OMB Control No. 3235–0382]

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:
Schedule 14D–9F

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 this request for extension of the previously approved collection of information discussed below.

Schedule 14D–9F (17 CFR 240.14d–103) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) is used by any foreign private issuer incorporated or organized under the laws of Canada or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of securities filed on Schedule 14D–1F. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. We estimate that Schedule 14D–9F takes approximately 2 hours per response to prepare and is filed by approximately 6 respondents annually for a total reporting burden of 12 hours (2 hours per response × 6 responses).

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 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: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting 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: June 18, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–13279 Filed 6–20–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86120; File No. SR–BX–2019–019]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Credits at Equity 7, Section 118(a)

June 17, 2019.

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 June 4, 2019, 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, II, and III, 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 the Exchange's credits at Equity 7, Section 118(a), as described further below.

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

The Exchange operates on the ''taker-maker'' model, whereby it pays credits to members that take liquidity and

[24] 17 CFR 240.17Ad–22(e)(6)(i).

[25] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

charges fees to members that provide liquidity. Under Equity 7, Section 118(a), the Exchange describes the charges and credits applied for the use of the order execution and routing services of the Exchange System by members for all securities priced at $1 or more per share that it trades. As described below, the Exchange is amending the qualification criteria of a credit provided to members for entering Orders that access liquidity in the BX System.

Description of the Change

The purpose of the proposed rule change is to reduce the qualification criteria required to receive a credit for entering an Order in a Tape A or C security that accesses liquidity in the BX System. Specifically, the Exchange currently provides a credit of $0.0015 per share executed for Tape A and C securities for an Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.070% of total Consolidated Volume during month. The Exchange is proposing to decrease the Consolidated Volume requirement from 0.070% to 0.065%.[3]

Applicability to and Impact on Participants [4]

The proposed reduction in the qualification criteria is not targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants. Non-members cannot qualify for the credit.[5] The proposed change will lower the threshold required to achieve a better remove rate and therefore will make it more achievable for more members.[6] Consequently, the proposed change will not negatively impact members that do not qualify because their credit opportunities will remain unchanged. Moreover, the proposed fee is a reduction in costs for members that access quotes on the Exchange, because in the absence of the proposed change members would receive a lower rebate, resulting in a higher cost for transacting on the Exchange. Based on April 2019 volumes, the existing tier represents a minimum of 4.387 million shares removed. Based on past experience administering similar pricing proposals, the Exchange estimates that multiple members of various types would be reasonably positioned to meet the amended tier.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.[9]

The Proposal Is Reasonable

The Exchange's proposed reduction to the qualification requirement is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [10]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds. These competing pricing schedules, moreover, are presently comparable to if not more generous than those that the Exchange provides.[11]

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.[12] Separately, the Exchange has provided the SEC staff multiple examples of instances where pricing

[3] The Exchange calculates Consolidated Volume on a monthly basis to determine qualification for the credit. Because the Exchange is filing this on the second trading day of the month of June 2019, it will apply qualification for the tier based on 0.070% of total Consolidated Volume for the single trading day during which this proposed change was not in effect. The Exchange will apply the proposed 0.065% criteria for the remaining trading days during the month. As a consequence, qualification for the credit will be determined by a weighted combination of the two levels of Consolidated Volume based on the number of trading days the particular requirement is in effect.

[4] On May 21, 2019, the SEC Division of Trading and Markets (the ''Division'') issued fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Guidance''). Within the Guidance, the Division noted, among other things, that the purpose discussion should address ''how the fee may apply differently (*e.g.,* additional cost vs. additional discount) to different types of market participants (*e.g.,* market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants.'' *See* Guidance (available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees*). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

[5] *Id.*

[6] As substantiated by data provided to the Commission.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See* Guidance, *supra* note 4. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

[10] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[11] The Exchange notes that NYSE National and CBOE EDGA offer higher rebates for their members accessing liquidity on their exchanges. CBOE EDGA provides a standard rebate for liquidity removers of $0.0024 per share executed (or higher if a member qualifies for a volume tier), and NYSE National has a range from a fee of $0.0005 per share executed to a rebate of $0.0020 per share executed. In addition, CBOE BYX offers a similar pricing schedule to Nasdaq BX.

[12] The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. *See* Guidance, *supra* note 4. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

changes by BX and other exchanges have resulted in shifts in exchange market share.

Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors. The Exchange also believes that the particular adjustment that it proposes to its volume qualification criteria for the $0.0015 per share executed credit is a reasonable attempt to achieve this end because this credit tier is particularly important to the Exchange's customers. That is, this credit is one for which several Exchange members presently qualify and whose orders comprise substantial remove volume on the Exchange. It is also a credit tier that has been endangered by the recent decline in the Exchange's market share insofar as this decline has made it more difficult for members to achieve and maintain its total Consolidated Volume requirement. Finally, the Exchange believes that adjusting the qualification criteria for this particular credit will not only help ensure that qualifying members will continue to qualify for the credit, but it also will render the credit readily achievable for a broader group of members. The Exchange estimates that the proposal will provide multiple members with a reasonable opportunity to meet the adjusted tier.

The Proposal Is an Equitable Allocation of Credits

The Exchange believes its proposal allocates its rebates fairly among its market participants. The Exchange is not proposing to adjust the amount of the credit, which will remain at the $0.0015 per share executed level that the Commission has already approved. By proposing to lower the criteria to qualify for the credit, the Exchange intends to help ensure that those members that currently qualify for it will continue to do so even as the Exchange's market share has declined. It also intends to broaden the base of members who can qualify for it. Finally, the Exchange intends that its proposal will help to stem or reverse the loss in market share that the Exchange is experiencing.

The Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. The proposal neither targets nor will it have a disparate impact on any particular category of market participant, and in fact, will allow more market participants to take advantage of the existing credit. The Exchange calibrated the proposal to impact a broad swath of members whose orders comprise substantial remove volume so that it would have a significant effect. The Exchange expects that the proposal will enable the multitude of members that currently qualify for the credit tier to continue to do so. Additionally, based on May 2019 volume, the Exchange estimates that the proposal will provide multiple members with a reasonable opportunity to meet the adjusted tier. As to those members that do not presently qualify for the credit tier, and will not qualify for the adjusted tier, the proposal will not adversely impact their existing pricing or their ability to qualify for other credit tiers.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

Furthermore, the Exchange's proposal to adjust the qualification criteria for the $0.0015 per share executed credit tier is not unfairly discriminatory. The Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. Instead, the Exchange calibrated the proposal to impact a broad swath of members whose orders comprise substantial remove volume so that it would have a significant effect. The Exchange expects that the proposal will enable the multitude of existing members that currently qualify for the credit tier to continue to do so. Additionally, based on May 2019 volume, the Exchange estimates that the proposal will provide multiple members with a reasonable opportunity to meet the adjusted tier. As to those members that do not presently qualify for the credit tier, and will not qualify for the adjusted tier (although they might in the future as their business grows), the proposal will not adversely impact their existing pricing or their ability to qualify for other credit tiers.

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.

Intramarket Competition

Addressing whether the proposed change could place certain market participants at a relative disadvantage compared to other market participants, the Exchange does not believe that members that do not have the capacity to provide the level of Consolidated Volume required by the proposal are disadvantaged. As noted above, all members benefit from the removal of liquidity by those that choose to meet the tier qualification criteria. Members may grow their businesses so that they have the capacity to receive the credit. Moreover, members are free to trade on other venues to the extent they believe that the fees assessed and credits provided are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposed fee could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that the proposed change to the qualification criteria for the credit for accessing liquidity of Tape A and C does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 32 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed reduced criteria is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17–18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 38% of industry volume for the month of April 2019.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13]

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–2019–019 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–2019–019. 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–2019–019 and should be submitted on or before July 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–13116 Filed 6–20–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–127, OMB Control No. 3235–0108]

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 14f–1

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 this request for extension of the previously approved collection of information.

Under Exchange Act Rule 14f–1 (17 CFR 240.14f–1), if a person or persons have acquired securities of an issuer in a transaction subject to Sections 13(d) or 14(d) of the Exchange Act, and changes a majority of the directors of the issuer otherwise than at a meeting of security holders, then the issuer must file with the Commission and transmit to security holders information related to the change in directors within 10 days prior to the date the new majority takes office as directors. We estimate that it takes approximately 18 burden hours to provide the information required under Rule 14f–1 and that the information is filed by approximately 64 respondents for a total annual burden of 1,152 hours (18 hours per response × 64 responses).

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 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,

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting 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: June 18, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–13282 Filed 6–20–19; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before August 20, 2019.

ADDRESSES: Send all comments to Mary Frias, Loan Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Frias, Loan Specialist, Office of Financial Assistance, 202–401–8234, *mary.frias@sba.gov,* or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov;*

SUPPLEMENTARY INFORMATION: The Small Business Investment Act authorizes SBA to guarantee a debenture issued by a Certified Development Company (CDC). The proceeds from each debenture are used to fund loans to eligible small business concerns (''504 loans''). 15 U.S.C. 697(a). The Small Business Act and the Small Business Investment Act mandate that all guaranteed loans provided by the SBA to small business concerns (SBCs) must have a reasonable assurance of ability to repay. See 15 U.S.C. 636(a)(6) and 687(f); see also 13 CFR 120.150. The information collections described below—SBA Form 1244 and SBA Form 2450—are part of the application process for a 504 loan. SBA is proposing to make changes to Form 2450 to remove duplicative questions as well as questions that are no longer applicable to the 504 Loan Program.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

Title: Application for Section 504 Loan.

Description of Respondents: Small Business Concerns applying for a section 504 loan and Certified Development Companies.

(i) *Form Number:* SBA Form 1244, Application for Section 504 Loan. The information collected by this form is used to review the eligibility of the small business concern (SBC) for SBA financial assistance; the creditworthiness and repayment ability of the SBC; and the terms and conditions of the 504 loan for which the SBC is applying.

(ii) Form 2450 is the Eligibility Checklist used to document the 504 loan's eligibility based on program requirements. These forms are used by CDCs to request SBA's guarantee on each debenture.

SBA has established a streamlined loan application processing procedure known as the Abridged Submission Method (ASM). Under this process, the CDCs are required to collect and retain all exhibits to SBA Form 1244, but are only required to submit selective documents. CDCs using the non-ASM method are required to submit all documents and exhibits required for Form 1244. All CDCs must submit the Form 2450.

The burden estimates (based on the experience of the CDCs and SBA field offices) of the burden hours imposed by use of these forms, including exhibits, are as follows:

There are 260 CDCs affected by the information collection. The total number of small business concerns that will annually respond to Form 1244 is approximately 7,000 based on the average submission of applications submitted from CDCs over the past FY using both the ASM and non-ASM methods. This is a total of 7,260 respondents. Burden hours are 2.25 hours for ASM and 2.45 hours for non-ASM submissions (this number is slightly higher due to the fact that these respondents are required to submit more documentation than the ASM respondents). These estimates include the content from SBA Form 2450, which takes an estimated 15 minute for completion.

Form 1244

Total burden hours = 16,799.

Submission through the ASM—4,937 × 2.25 = 11,108 burden hours.

Submission through non-ASM (standard method)—2,323 × 2.45 = 5,691 burden hours.

Form 2450

Total burden hours = 1,815.

Submission through the ASM and non-ASM—7,260 × .25 = 1,815 burden hours.

Total Burden Hours = 18,614.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–13284 Filed 6–20–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before August 20, 2019.

ADDRESSES: Send all comments to Mary Frias, Loan Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Frias, Loan Specialist, Office of Financial Assistance, *mary.frias@sba.gov* 202–401–8234, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov;*

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) regulations require that we determine that a participating Certified Development Company's Non-Bank Lender Institution's or Microlender's management, ownership, etc. is of ''good character''. To do so requires the information requested on the Form 1081. This form also provides data used to determine the qualifications and capabilities of the lenders key personnel.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Statement of Personal History.

Description of Respondents: Small Business Lending Companies.

Form Number: SBA Form 1081.

Total Estimated Annual Responses: 215.

Total Estimated Annual Hour Burden: 107.50.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–13286 Filed 6–20–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 20, 2019.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Louis Cupp, New Markets Policy Analyst, Office of Investment, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, 202–619–0511 *louis.cupp@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA Forms 1405 and 1405A are used by Small Business Administration (SBA) examiners as part of their examination of licensed small business investment companies (SBICs). This information is collected from SBIC'S Stockholders and partners and provides independent third party confirmation of an SBIC's representations concerning its owners. The information helps SBA to evaluate the SBIC'S with applicable laws and regulations concerning capital requirements.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Title: ''Stockholders' Confirmation (Corporation); Ownership Confirmation (Partnership)''.

Description of Respondents: Licensed small business investment companies (SBICs).

Form Number's: 1405, 1405A.

Annual Responses: 600.

Annual Burden: 600.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–13285 Filed 6–20–19; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10803]

Foreign Affairs Policy Board Meeting Notice; Closed Meeting

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the Department of State announces a meeting of the Foreign Affairs Policy Board to take place on July 8, 2019, at the Department of State, Washington, DC.

The Foreign Affairs Policy Board reviews and assesses: (1) Global threats and opportunities; (2) trends that implicate core national security interests; (3) technology tools needed to advance the State Department's mission; and (4) priorities and strategic frameworks for U.S. foreign policy.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. 10(d), and 5 U.S.C. 552b(c)(l), it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526.

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance in that this advisory committee meeting must be held on July 8th to accommodate the schedule of the Secretary of State.

For more information, contact Emily Sissell at (202) 647–4293.

Dated: June 17, 2019.

Kiron K. Skinner,

Director, Office of Policy Planning, Department of State.

[FR Doc. 2019–13159 Filed 6–20–19; 8:45 am]

BILLING CODE 4710–10–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36291]

Dakota Southern Railway Company—Modified Rail Certificate

On April 17, 2019, Dakota Southern Railway Company (DSRC), a Class III rail carrier, filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150 subpart C—*Modified Certificate of Public Convenience and Necessity,* to provide freight rail operations over approximately 187.98 miles of rail line owned by the State of South Dakota (State) and located between milepost 374.44 in Mitchell, S.D., and extending in a westerly direction to milepost 562.53 in Kadoka, S.D. (the Segment). According to DSRC, the Segment is part of a longer line from Mitchell to Rapid City, S.D. (the MRC Line). DSRC states that the MRC Line, which was formerly owned by the Milwaukee, St. Paul & Pacific Railroad Company, is now owned by the State.

DSRC states that, in 1980, the U.S. District Court for the Northern District of Illinois authorized the abandonment of the MRC Line, following the issuance of a report by the Interstate Commerce Commission recommending abandonment. *See Ogilvie—Aban.—in S.D., Iowa & Neb.,* AB 7 (Sub-No. 88) (ICC served May 14, 1980).[1] According

[1] The Milwaukee Railroad Restructuring Act transferred jurisdiction over Chicago, Milwaukee, St. Paul & Pacific Railroad Company abandonments from the Interstate Commerce Commission to the U.S. District Court for the Northern District of Illinois. *Ogilvie,* AB 7 (Sub-No. 88), slip op. at 1.

to DSRC, abandonment of the MRC Line was not consummated and instead the MRC Line was acquired by the State in 1980. (DSRC Notice 3.) DSRC states that the portion of the MRC Line west of Kadoka is now railbanked. *See Mitchell-Rapid City Reg'l R.R. Auth.—Modified Rail Certificate—Between Caputa & Rapid City, S.D.,* FD 35149 (STB served Apr. 28, 2009) (issuing notice of interim trail use between milepost 659.6 to milepost 646.0); *Sammamish Transp. Co.—Notice of Interim Trail Use & Termination of Modified Certificate,* FD 33398 (Sub-No. 1) (STB served Feb. 26, 1998) (issuing notice of interim trail use between milepost 646.0 to milepost 562.53). In addition, DSRC states that, to the best of its knowledge, two carriers have obtained modified certificate rights to operate over portions of the MRC Line east of Kadoka but no longer exercise those rights.[2]

The verified notice indicates that the State leases the Segment to the MRC Regional Rail Authority (MRCA), a political subdivision of the State. In 2012, MRCA entered into a sublease with DSRC, which provides that DSRC will be the operator of the Segment and will assume all common carrier obligations to provide service on the Segment. (DSRC Notice Ex. C, 2 ¶ 6.) Under the terms of the sublease, DSRC will provide rail service on the Segment for 20 years from and after the effective date of January 1, 2012.[3] (*Id.* at 4 ¶ 17.)

According to DSRC, it interchanges with BNSF Railway Company (BNSF) at or near Mitchell, pursuant to interchange, trackage, haulage, and lease agreements with BNSF.

The Segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies & Instrumentalities & Political Subdivisions,* FD 28990F (ICC served July 16, 1981); 49 CFR 1150.22.

DSRC indicates that no subsidy is involved and that there are no preconditions that shippers must meet to receive rail service; DSRC also provides information regarding the nature and extent of its liability insurance coverage. *See* 49 CFR 1150.23(b)(4)–(5).

This notice will be served on the Association of American Railroads (Car Service Division), as agent for all railroads subscribing to the car-service and car-hire agreement, at 425 Third Street SW, Suite 1000, Washington, DC 20024; and on the American Short Line and Regional Railroad Association at 50 F Street NW, Suite 7020, Washington, DC 20001.

Board decisions and notices are available at *www.stb.gov.*

Decided: June 14, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–13152 Filed 6–20–19; 8:45 am]

BILLING CODE 4915–01–P

[2] *See Nobles Rock R.R.—Modified Rail Certificate,* FD 33792 (STB served Sept. 16, 1999); *Burlington N. R.R.—Operations—in States of Iowa & S.D.,* FD 29672 (ICC served Aug. 17, 1981). DSRC states that, to the best of its knowledge, Burlington Northern's rights were terminated by notice, (*see* Burlington N. R.R. Letter, Oct. 14, 1986, *Burlington N. R.R.,* FD 29672), and Nobles Rock became insolvent and no longer exists. (DSRC Notice 4 n.2.)

[3] DSRC states that it has been operating pursuant to the terms of the sublease since January 1, 2012. According to DSRC, SDR Holding Company, which controls DSRC, had been under the impression that a modified certificate previously had been issued. (DSRC Notice 2, 4–5.)

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36306]

Brookhaven Rail Partners, LLC, Related Infrastructure, LLC, BRX Transportation Holdings, LLC, and BRX Acquisition Sub, Inc.—Control Exemption—Pioneer Railcorp, et al.

Brookhaven Rail Partners, LLC (Brookhaven), Related Infrastructure, LLC (Related Infrastructure), BRX Transportation Holdings, LLC (BRX Transportation), and BRX Acquisition Sub, Inc. (BRX Acquisition) (collectively, Applicants), filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire control of Pioneer Railcorp (Pioneer), a noncarrier holding company that controls 15 Class III railroad subsidiaries: Alabama & Florida Railway Co., Inc.; Alabama Railroad Co., Inc.; Decatur Junction Railway Co.; Elkhart & Western Railroad Co.; Fort Smith Railroad Co.; The Garden City Western Railway, Inc.; Georgia Southern Railway Co.; Gettysburg & Northern Railroad Co.; Indiana Southwestern Railway Co.; Kendallville Terminal Railway Co.; Keokuk Junction Railway Co.; Michigan Southern Railroad Company; Mississippi Central Railroad Co.; Pioneer Industrial Railway Co.; and Vandalia Railroad Company (collectively, Pioneer Railroads).

According to the verified notice, Applicants intend to acquire 100% of the equity interests of Pioneer pursuant to an Agreement and Plan of Merger dated May 16, 2019.[1] As a result of the proposed transaction, BRX Acquisition will merge with and into Pioneer, with Pioneer the surviving corporation. Pioneer will become a wholly owned subsidiary of BRX Transportation, and, indirectly, Brookhaven and Related Infrastructure will thereby acquire control of the Pioneer Railroads.[2]

The verified notice states that the parties contemplate that the transaction will be consummated during the third quarter of 2019. The earliest the transaction may be consummated is July 7, 2019, the effective date of the exemption (30 days after the verified notice was filed).

The verified notice states that: (i) Applicants do not own or control any rail line that connect with any of the Pioneer Railroads; (ii) the proposed transaction is not part of a series of anticipated transactions that would connect any railroad owned or controlled by Applicants with the Pioneer Railroads or connect any of the Pioneer Railroads with one another; and (iii) the proposed transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

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 to stay must be filed no later than June 28, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36306, must be filed with the Surface Transportation Board via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Applicants'

[1] A redacted version of the agreement was filed with the notice of exemption. An unredacted version was filed concurrently under seal, along with Applicants' motion for protective order under 49 CFR 1104.14(b). The motion for protective order will be addressed in a separate decision.

[2] The verified notice states that Brookhaven and Related Infrastructure are separate unaffiliated entities, except for their joint ownership of BRX Transportation, which is the parent of BRX Acquisition.

representative, David F. Rifkind, Stinson LLP, 1775 Pennsylvania Avenue NW, Suite 800, Washington, DC 20006.

Board decisions and notices are available at *www.stb.gov.*

Decided: June 18, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–13204 Filed 6–20–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2017–0023]

RIN 2125–ZA11

Guidance on Safe Harbor Rate Streamlining for Engineering and Design Services Consultant Contracts

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This Notice announces and outlines the final guidance for the implementation of a Safe Harbor indirect cost rate for certain engineering design service firms that find establishing such rates to be costly and a barrier to participating in engineering and design service contracts reimbursed with Federal-aid Highway Program (FAHP) funds.

DATES: This guidance is effective June 21, 2019.

ADDRESSES: This document, the request for comments, and the comments received may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov.* An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at: *https://www.federalregister.gov* and the Government Publishing Office's website at: *http://www.gpo.gov/fdsys.*

FOR FURTHER INFORMATION CONTACT: Mr. John McAvoy, Consultant Services Program Manager, Office of Infrastructure, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–9898, (202) 853–5593. For legal questions: Mr. Steven Rochlis, Office of the Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–9898, (202) 366–1395. Office hours are from 8:00 a.m. to 4:30 p.m. E.T., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION:

Summary Discussion of Comments

The FHWA published a **Federal Register** Notice on July 17, 2018, at 83 FR 33288, seeking public comment on its proposed guidance for implementation of a Safe Harbor indirect cost rate and, its intention to notify all contracting agencies receiving FAHP funds that an agency-developed Safe Harbor indirect cost rate for eligible consulting firms may be used as a component of a risk-based oversight process to provide reasonable assurance to FHWA that consultant costs on FAHP-funded contracts are allowable in accordance with the Federal regulations. In preparing this guidance to assist in the implementation of a Safe Harbor program, FHWA considered all public comments submitted to the **Federal Register** Notice.

Based on the comments received, FHWA is finalizing the guidance. Since compliance with this guidance is voluntary for both the contracting agency and the consulting firm, it is not anticipated to impose any costs. Entities that choose to use this guidance would do so only if they anticipate a net positive impact. In particular, consulting firms that voluntarily comply could experience expanded business opportunities because they become eligible to work on contracts funded by a Federal grant, which they previously were not. This guidance may also result in cost savings due to a reduction in resources needed to conduct oversight and audits of small consulting firms.

Commenters included several State departments of transportation (State DOT), the American Council of Engineering Companies, and one individual. The respondents were in favor of the implementation of a Safe Harbor indirect cost rate program. Several commenters provided suggestions on how to make the program operate most efficiently. The following summarizes the comments and FHWA's response.

General Comments

• Multiple commenters expressed support for expansion of the Safe Harbor indirect cost rate program beyond the 10 States that are currently piloting the program. Multiple commenters noted that they were a pilot State for the Safe Harbor Indirect Cost Rate Experiment and Test and that the program is effectively meeting its stated goals.

• One commenter suggested that each State DOT implement its own Safe Harbor indirect cost rate, and that the rate apply to agreements within the respective State DOT only. If a Safe Harbor firm does work for multiple State DOTs, the Safe Harbor indirect cost rate for the respective State DOT would take precedence.

The FHWA agrees with the suggestion that each State DOT implement its own Safe Harbor indirect cost rate and that the rate apply to agreements within the respective State DOT only. The Safe Harbor indirect cost rate is applicable to individual specific contracts, and if a Safe Harbor firm does work on multiple contracts in multiple States, the Safe Harbor indirect cost rate for the respective State DOT should take precedent.

• Multiple commenters made recommendations regarding the indirect cost rate to be used in the Safe Harbor Program. One suggested a nationwide rate of 110 percent as was tested in the pilot program. Another suggested that States determine their own rate with a floor of 110 percent.

The FHWA disagrees with the recommendation that one nationwide Safe Harbor indirect cost rate be established. The FHWA believes that State DOTs should be able to determine their policy for accepting eligible firms into their program, applying the Safe Harbor indirect cost rate, and graduating firms into a cognizant agency approved indirect cost rate. This would be consistent with current indirect cost rate procedures where contracting agencies develop their own policy pertaining to application of cognizant agency approved indirect cost rates. A rate that is set too low will not achieve the desired result of incentivizing new, small, or disadvantaged business enterprises into the professional services market. A rate that is set too high is at risk for overpaying consultant actual costs.

• Multiple commenters suggested that once a firm has established a cognizant agency indirect cost, that firm should be allowed to immediately start using the new rate on existing contracts.

The FHWA agrees that the State DOT should be allowed to develop criteria for transitioning firms out of the program based on its own risk assessment.

• Multiple commenters suggested that the guidance should clearly indicate the Safe Harbor indirect cost rate program is voluntary for both the contracting agency and consultant and temporary in nature, intended to provide the consultant a window to work on Government contracts while developing its cost accounting procedures.

The FHWA agrees that use of the Safe Harbor indirect cost rate is voluntary for both the contracting agency and consultant. Existing regulations found at 23 CFR 172.11(b)(1)(iii) allow for the use of other methods to contract with firms that do not have a cognizant agency approved indirect cost rate and do not volunteer to use the Safe Harbor indirect cost rate.

• Multiple commenters suggested a consultant firm should be able to transition from the Safe Harbor indirect cost rate to a cognizant agency approved indirect cost rate within 3 years of entering the program.

The FHWA agrees that provided a relatively consistent contract workload, a consulting firm should be able to transition from the Safe Harbor indirect cost rate to a cognizant agency approved indirect cost rate within 3 years of entering the program.

• Some commenters recommended that a consulting firm have the option to utilize the Safe Harbor indirect cost rate indefinitely.

The FHWA disagrees with the recommendation to authorize an indefinite Safe Harbor indirect cost rate. Provided a relatively consistent contract workload, a consulting firm should be able to transition from the Safe Harbor indirect cost rate to a Federal Acquisition Regulation (FAR) indirect cost rate within 3 years of entering the program. However, FHWA agrees that the State DOT should be allowed to develop criteria for determining eligible firms and for transitioning firms out of the program based on its own risk assessment.

• Multiple commenters suggested the guidance should include the option for a field or project office indirect cost rate.

The FHWA sees the potential for benefit when applied to a field-based indirect cost rate as part of a State DOT's risk-based oversight process to provide reasonable assurance of consultant compliance with Federal cost principles. Ultimately, it is up to the State DOT to include a field or project office indirect cost rate option when developing their Safe Harbor indirect cost rate program.

• One commenter recommended that if a consulting firm has not developed an accepted indirect cost rate within the past 3 years, it should be eligible for the Safe Harbor indirect cost rate program.

The FHWA agrees that a contracting agency could, as part of their risk-based oversight process, decide to make their Safe Harbor indirect cost rate available to a firm that has had their cognizant agency approved indirect cost rate lapse. However, contracting agencies should understand that participation in the program is voluntary and requiring a firm to use a Safe Harbor indirect cost rate because of a lapsed approved indirect cost rate may have the effect of imposing a de facto ceiling on an indirect cost rate, which is prohibited by statute. Existing regulations found at 23 CFR 172.11(b)(1)(iii) allow for the use of other methods to contract with firms that do not have a cognizant agency approved indirect cost rate.

• One commenter wrote to strongly support the existing statutory and regulatory framework governing the procurement, contracting, and administration of engineering and design-related services on Federal-aid highway projects, stating that the laws and regulations have brought a measure of uniformity and consistency to State transportation programs and help to ensure that Federal funds are administered efficiently and effectively. The commenter further stated that education and training of engineering firms and State DOT officials on compliance, interpretation, and implementation of Federal rules in a fair and consistent manner protects the business interests of the firms and, more importantly, promotes transparency and accountability for taxpayer funds and protects against waste, fraud, and abuse.

The FHWA agrees that the existing statutory and regulatory framework governing the procurement, contracting, and administration of engineering and design-related services on Federal-aid highway projects promotes quality engineering services, provides transparency and accountability for taxpayer funds, and protects against waste, fraud, and abuse. Note that FHWA is not creating any new rules or regulations through this **Federal Register** notice. The FHWA is acknowledging that existing rules in 23 CFR 172 allow contracting agencies to develop their own risk-based oversight process, approved by FHWA, to provide reasonable assurance of consultant compliance with Federal cost principles and that a contracting agency-developed Safe Harbor indirect cost rate program can be a component of that process.

• One commenter expressed concern that the proposed Safe Harbor indirect cost rate program could be a step backwards if not implemented carefully. The notice gives broad latitude to State DOTs to set the parameters and procedures for such a program resulting in a wide array of approaches that treat firms differently from State to State. Such an outcome could undermine the coordinated efforts of FHWA, American Association of State Highway and Transportation Officials, and American Council of Engineering Companies over the last 10+ years.

The FHWA recognizes that regional variances do exist and contracting agencies will have the opportunity to develop policies and procedures that reflect the needs of operating in different markets. We also note that FHWA is not creating any new rules or regulations nor are we amending current policy through this **Federal Register** notice. We acknowledge that existing rules in 23 CFR 172 allow contracting agencies to develop their own risk-based oversight process, approved by FHWA, to provide reasonable assurance of consultant compliance with Federal cost principles and that a contracting agency-developed Safe Harbor indirect cost rate program can be a component of that process. The FHWA believes that a continuing dialogue between the State DOTs and engineering firms are instrumental to development of policies and procedures that are compliant with 23 CFR 172.

• One commenter recommended strengthening the language in the notice to require adherence to the parameters of the work plan utilized in the pilot program. The commenter further recommended that the guidance be updated to require compliance with the policies and procedures outlined in the pilot program.

A Safe Harbor program developed by a contracting agency would be part of that agency's written policies and procedures compliant with 23 CFR 172.5(c) and subject to approval by FHWA. Participation in the Safe Harbor indirect cost rate program is voluntary for the contracting agency and the consultant. If both entities do not agree on the parameters of the Safe Harbor indirect cost rate implementation, existing regulations provide guidance on how to proceed when the indirect cost rate has not been established by a cognizant agency. Actions that administratively limit or cause de facto ceilings on indirect cost rates are prohibited.

• One commenter suggested FHWA should include instructions to be sure that any State that implements a Safe Harbor indirect cost rate has a detailed plan in place for educating the firms of their true cost structure and moving the participating firms out of the program and into a cognizant agency approved indirect cost rate. The commenter theorized that, without the proper knowledge, setting a Safe Harbor indirect cost rate that is too low will have the effect of locking a firm into a money losing venture that will hamper the ability of the firm to mature to a formally recognized, properly formulated indirect cost rate.

The FHWA believes that a contracting agency should be able to determine their policy for educating and accepting eligible firms into their program, applying the Safe Harbor indirect cost rate, and graduating firms into a cognizant agency approved indirect cost rate. This would be consistent with current indirect cost rate procedures where contracting agencies develop their own policy pertaining to application of cognizant agency approved indirect cost rates. A rate that is set too low will not achieve the desired result of incentivizing new, small, or disadvantaged business enterprises into the professional services market. A rate that is set too high is at risk for overpaying consultant actual costs.

Guidance on Safe Harbor Rate Streamlining for Engineering and Design Services Consultant Contracts

Applicability and Purpose

This guidance applies to consulting firms providing engineering and design related services under a contract reimbursed with Federal-aid highway program (FAHP) funds and contracting agencies receiving FAHP funds. Consulting firms providing services under a contract reimbursed with FAHP funds are required to account for, and bill, costs in accordance with the Federal cost principles of the FAR of 48 CFR part 31. To do so, consulting firms develop indirect cost rates in accordance with the Federal cost principles. At the same time, contracting agencies shall provide reasonable assurance to FHWA that consulting firm costs claimed under FAHP-funded contracts, including indirect costs, are allowable in accordance with the Federal cost principles. 23 CFR 172.11(c)(1).

Adhering to these accounting requirements can place a significant burden on some consulting firms and may create a barrier for otherwise qualified firms to compete for FAHP-funded contracts. Many small firms, including Disadvantaged Business Enterprise firms, lack the financial expertise or financial resources to either develop an indirect cost rate themselves or hire a Certified Public Accountant firm to do it for them. New or start-up firms generally do not have a contract-related cost history to use as a base for development of an indirect cost rate. These firms are typically prohibited from participating in FAHP-funded contracts without the development and application of a provisional indirect cost rate for each specific contract, which is adjusted based upon a labor intensive, contracting agency-conducted final audit at the completion of the contract.

Background and Pilot Program

To remove these barriers and to enhance contracting agency oversight of compliance with Federal cost principles, FHWA developed the Safe Harbor Indirect Cost Rate Test and Evaluation pilot. Ten contracting agencies participated in a test where new or small consulting firms were given the option of applying a Safe Harbor indirect cost rate to specific contracts. The selected Safe Harbor indirect cost rate was conservatively lower than the industry average rate, allowing the firms to participate in the engineering services market without an audit of their costs while providing an incentive for the firms to develop an actual rate when allowed by their cost history.

Test results showed a reduction in the financial management barriers that prevented new, small, or disadvantaged but qualified consulting firms from entering the federally funded engineering services market, and creation of a framework for these consulting firms to establish a cognizant agency approved indirect cost rate. Following a risk-based approach allowed contracting agency oversight and audit resources to prioritize their efforts on more complex, higher risk contracts.

The use of a Safe Harbor indirect cost rate is voluntary for both the contracting agency and the consulting firm. During the test and evaluation, a consulting firm was considered eligible to use a Safe Harbor indirect cost rate if it had not had an indirect cost rate previously accepted by a cognizant agency. Consulting firms with an audited, or otherwise accepted, actual indirect cost rate, developed in accordance with the Federal cost principles, were not considered eligible to participate in the Safe Harbor Indirect Cost Rate Program.

The FHWA's test and evaluation pilot used a nationwide Safe Harbor indirect cost rate of 110 percent of a firm's direct salary rate. This rate provided a minimal risk to contracting agencies for overpayment to those consulting firms participating in the program. Based on FHWA's experience with this pilot, FHWA will expand the use of the Safe Harbor indirect cost rate, beyond the 10 pilot States, to allow other interested contracting agencies receiving FAHP funds to develop and implement a self-administered Safe Harbor Indirect Cost Rate Program, under a risk-based approach compliant with 23 CFR 172.11(c).

Beyond the Pilot—Guidance on Use of the Safe Harbor Indirect Cost Rate

This guidance replaces the Safe Harbor Indirect Cost Rate Test and Evaluation pilot by expanding the scope of the program beyond the ten contracting agencies that participated in the pilot.

Contracting agencies are given discretion to determine the eligibility of consulting firms for a Safe Harbor indirect cost rate for use on a case-by-case basis and are required to document their decision.

While the original test of the Safe Harbor indirect cost rate only applied to an office-based indirect cost rate, FHWA sees the potential for benefit if a contracting agency elects to apply a field-based indirect cost rate as part of the agency's risk-based oversight process to provide reasonable assurance of consultant compliance with Federal cost principles.

If agreed to by both the contracting agency and the consulting firm, the Safe Harbor indirect cost rate is applied to new contracts executed with a contracting agency, or subrecipient.

Once applied to a contract, the Safe Harbor indirect cost rate should be used for the duration of the contract. A Safe Harbor indirect cost rate may be used in the determination of the fixed fee portion of the contract, which would not be subject to adjustment unless warranted by changes to the scope of work or duration of the contract.

Firms that use the Safe Harbor indirect cost rate, and do not have established salaries or wage rates for employees or classes of employees, use negotiated, fixed hourly labor rates for the direct labor portion of the contracted services. The negotiated direct labor rate should meet the reasonableness provisions as set forth in 2 CFR 200.404, considering the nature of the services to be provided. Where appropriate for the scope of services under contract, a ''fully loaded'' or ''specific rate of compensation'' hourly rate could be established utilizing a reasonable hourly direct labor rate, a Safe Harbor indirect cost rate as the overhead rate component, and an appropriate amount of fixed fee that considers the complexity and risk involved.

The Safe Harbor indirect cost rate is intended to be a component of a contracting agency's risk-based oversight of the procurement, management, and administration of engineering and design-related services contract. Contracting agencies using the Safe Harbor indirect cost rate must first prepare and maintain written policies and procedures establishing the program in accordance with 23 CFR 172.5(c)(10), then develop written risk-based oversight procedures designed to provide reasonable assurance of consultant compliance with the Federal cost principles in accordance with 23 CFR 172.11(c)(2). The use of the Safe Harbor indirect cost rate is voluntary for both the contracting agency and for eligible firms. In reviewing the eligibility of a consulting firm opting to use the Safe Harbor indirect cost rate, it may be necessary to contact the State DOT in the home State of the consulting firm to verify the audit history of the firm and ensure the firm does not have an audited or otherwise accepted indirect cost rate developed in accordance with the Federal cost principles. Some evaluation of the accounting system of the consulting firms choosing to use the Safe Harbor indirect cost rate may be necessary to verify the capability of accumulating and tracking direct labor for applying the Safe Harbor indirect cost rate, as well as for billing other direct costs by contract, segregating indirect costs, etc. The Internal Control Questionnaire provided in Appendix B of the *AASHTO Uniform Audit and Accounting Guide (2016 Edition)* may be used by contracting agencies as a tool for assessing the accounting system capabilities of firms opting to use the Safe Harbor indirect cost rate. A contracting agency may wish to conduct post contract audits or other evaluations to verify accurate accumulation and billing of direct contract costs. However, an audit of indirect costs is not necessary for Safe Harbor indirect cost rate contracts, as the rate should be applied for the duration of the contract, and retroactive adjustments to indirect costs incurred on these contracts is not necessary.

The FHWA Division Office will serve as the primary point of contact and liaison for the contracting agency. The FHWA Division Offices also will monitor the respective contracting agency's use of the Safe Harbor indirect cost rate in accordance with the approved, written risk-based oversight procedures.

Contracting agencies using FAHP funds must comply with all Federal, State, and local laws and regulations to remain eligible for reimbursement.

This guidance is not legally binding in its own right and will not be relied upon by the Department as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with this guidance document is voluntary only, and nonconformity will not affect rights and obligations under existing statutes and regulations.

Issued on: June 13, 2019.

Nicole R. Nason,

Administrator, Federal Highway Administration.

[FR Doc. 2019–13241 Filed 6–20–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0082; Notice 1]

Yokohama Tire Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Yokohama Tire Corporation (YTC) has determined that certain Yokohama RY023 brand replacement commercial tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 lbs) and Motorcycles.* YTC filed a noncompliance report dated July 12, 2018. YTC subsequently petitioned NHTSA on July 31, 2018, and submitted a supplemental petition on February 6, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of YTC's petition.

DATES: The closing date for comments on the petition is July 22, 2019.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed 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.
- *Hand Delivery:* Deliver comments by hand 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. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview

YTC has determined that certain Yokohama brand RY023 replacement commercial tires do not fully comply with paragraph S6.5(d) and (j) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 lbs) and Motorcycles* (49 CFR 571.119). YTC filed a noncompliance report dated July 12, 2018, pursuant to 49 CFR part 573, *Defects and Noncompliance Responsibility and Reports.* YTC subsequently petitioned NHTSA on July 31, 2018, and submitted a supplemental petition on February 6, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

II. Tires Involved

Approximately 4,704 Yokohama RY023 size 11R22.5 16(LR H) 146/143L commercial tires manufactured between February 2, 2018, and May 17, 2018, are potentially involved.

III. Noncompliance

YTC explains that the noncompliance was due to a mold error in which one sidewall, the serial sidewall, of subject tires incorrectly state the ply rating, load range and load capacity as required by paragraph S6.5(d) and (j) of FMVSS No. 119.

Specifically, the tires were marked:

14 PR LOAD RANGE G
MAX. LOAD SINGLE 2800 kg (6175 lbs) at 720 kPa (105 psi) COLD
MAX. LOAD DUAL 2650 kg (5840 lbs) at 720 kPa (105 psi) COLD

When they should have been marked:

16 PR LOAD RANGE H
MAX. LOAD SINGLE 3000 kg (6610 lbs) at 830 kPa (120 psi) COLD
MAX. LOAD DUAL 2725 kg (6005 lbs) at 830 kPa (120 psi) COLD

IV. Rule Requirements

Paragraph S6.5(d) and (j) of FMVSS No. 119, includes the requirements relevant to this petition:

• Except as specified in paragraph S6.5, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of paragraph S6.5.

• The maximum load rating and corresponding inflation pressure of the tire, shown as follows:

(Mark on tires rated for single and dual load): Max load single ____ kg (____ lb) at ____ kPa (____ psi) cold. Max load dual ____ kg (____ lb) at ____ kPa (____ psi) cold.

(Mark on tires rated for only for single load): Max load single ____ kg (____ lb) at ____ kPa (____ psi) cold.

• Markings must contain the letter designating the tire load range.

V. Summary of Petition

YTC described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, YTC submitted the following arguments:

1. This Petition concerns Yokohama 11R22.5 16PR RY023 commercial truck and bus replacement tires whose branding information incorrectly states the ply rating, load range and load capacity on one side (serial side) only, while the branding information on the other side (opposite serial side) is correct for the subject tires. Because of this mold branding error, these tires are not in compliance with the tire labeling requirement found in 49 CFR 571.119 S6.5(d) and (j), even though all of these tires were manufactured with the correct ply rating and load range.

2. YTC implemented verification countermeasures to prevent any recurrence of any incorrect tire markings. Further investigation determined that the suspect period ended when the incorrect mold had been removed from production on May 17, 2018, in the 19th production week of 2018. The 764 tires in containment will be repaired before they are sold.

3. Significantly, these tires were manufactured as designed and meet or exceed all applicable Federal motor vehicle safety performance standards. While the sidewall markings are correct on the opposite serial side, the sidewall markings on the serial side understate the construction and capacity of the subject tires. The misbranding of these tires is not a safety concern and also has no impact on the retreading, repairing and recycling industries. The affected tire mold has already been corrected and all future production will have the correct material shown on the sidewall.

4. NHTSA has studied the impact of tire labeling information on safety in the context of its rulemaking efforts under the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act. YTC stated that NHTSA's analysis concluded that tire construction information on a tire's sidewall is not relied upon by dealers and consumers in the selling or purchasing of tires and has an inconsequential impact on motor vehicle safety. In addition, YTC cited the following petitions that the agency has previously granted for similar noncompliances: *See* Sumitomo Rubber Industries, Grant of Petition for Decision of Inconsequential Noncompliance, 83 FR 13002 (March 26, 2018) and Goodyear Tire & Rubber Co., Grant of Petition for Decision for Inconsequential Noncompliance, 82 FR 18210 (April 17, 2017).

YTC concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

YTC's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that YTC no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after YTC notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–13196 Filed 6–20–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION SECTION.**

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On June 11, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. FOZ, Samer (a.k.a. AL–FOUZ, Samer; a.k.a. FAWAZ, Samer; a.k.a. FAWZ, Samir; a.k.a. FOUZ, Samer; a.k.a. FOZ, Samer Zuhair; a.k.a. FOZ, Samir), Meadows 2, Street 3, Villa 5, Dubai, United Arab Emirates; DOB 20 May 1973; POB Latakia, Syria; nationality Syria; alt. nationality Turkey; alt. nationality Saint Kitts and Nevis; citizen Saint Kitts and Nevis; Gender Male; National ID No. 784197341865828 (Syria) (individual) [SYRIA].

Designated pursuant to section 1(b)(iii) of Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria'' (E.O. 13573) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, Bashar AL–ASSAD, a person whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(i) of Executive Order 13582 of August 17, 2011, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria'' (E.O. 13582) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the GOVERNMENT OF SYRIA, a person whose property and interests in property are blocked pursuant to E.O. 13582.

2. FOZ, Amer (a.k.a. FOZ, Amer Zuhair); DOB 11 Mar 1976; POB Homs, Syria; Gender Male; Passport O6O1O274747 (Syria) (individual) [SYRIA] (Linked To: ASM INTERNATIONAL TRADING LLC).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for having acted or purported to act for or on behalf of, directly or indirectly, ASM INTERNATIONAL TRADING, LLC, an entity whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for having acted or purported to act for or on behalf of, directly or indirectly, ASM INTERNATIONAL TRADING, LLC, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

3. FOZ, Husen (a.k.a. FOZ, Hasan; a.k.a. FOZ, Hosn Zuhair; a.k.a. FOZ, Hoson; a.k.a. FOZ, Housen; a.k.a. FOZ, Hussen), Meadows 1, Street 13, Villa 38, Dubai, United Arab Emirates; Adawai Area Rawdet Aleman Bld, 1st Floor, Damascus City, Syria; DOB 25 May 1981; POB Lattakia, Syria; nationality Syria; alt. nationality Saint Kitts and Nevis; citizen Turkey; alt. citizen Syria; Gender Female; Passport U08527769 (Turkey); alt. Passport RE0027450 (Syria); National ID No. 06010274768 (Syria) (individual) [SYRIA] (Linked To: ASM INTERNATIONAL TRADING LLC).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for having acted or purported to act for or on behalf of, directly or indirectly, ASM INTERNATIONAL TRADING, LLC, an entity whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for having acted or purported to act for or on behalf of, directly or indirectly, ASM INTERNATIONAL TRADING, LLC, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

Entities

1. AL–MOHAIMEN FOR TRANSPORTING & CONTRACTING (a.k.a. AL MOHAIMEN FOR TRANSPORTATION AND CONTRACTING; a.k.a. AL–MOHAIMEN FOR TRANSPORTING AND CONTRACTING), Lattakia, Syria [SYRIA] (Linked To: AMAN HOLDING COMPANY).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, directly or indirectly, AMAN HOLDING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, directly or indirectly, AMAN HOLDING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

2. AMAN DAMASCUS JOINT STOCK COMPANY (a.k.a. AMAN DAMASCUS JSC), Damascus, Syria [SYRIA] (Linked To: AMAN HOLDING COMPANY).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, directly or indirectly, AMAN HOLDING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, directly or indirectly, AMAN HOLDING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

3. AMAN HOLDING COMPANY (a.k.a. AMAN GROUP; a.k.a. AMAN HOLDING GROUP; a.k.a. AMAN HOLDING PRIVATE JSC), Al Shurafa Building Aman Group, Al Moutanabi Street, Lattika, Syria [SYRIA] (Linked To: FOZ, Samer).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, directly or indirectly, Samer FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, directly or indirectly, Samer FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13582.

4. ASM INTERNATIONAL TRADING, LLC (a.k.a. ASM INTERNATIONAL GENERAL TRADING COMPANY; a.k.a. ASM INTERNATIONAL GENERAL TRADING LLC), Jumeirah Lake Tower, Cluster 1, Platinum Tower, Office 2405, P.O. Box 36102, Dubai, United Arab Emirates [SYRIA] (Linked To: FOZ, Samer).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, directly or indirectly, Samer FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13573.

Also, designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, directly or indirectly, Samer FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13582.

5. BS COMPANY OFFSHORE (a.k.a. B S COMPANY; a.k.a. B.S. COMPANY OFFSHORE; a.k.a. BS COMPANY SAL OFFSHORE), Salame Building, Beit Mery, Lebanon [SYRIA].

Designated pursuant to section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, BANIAS REFINERY COMPANY, an entity identified as meeting the definition of the GOVERNMENT OF SYRIA as set forth in section 8(d) of E.O. 13582 and section 542.305 of the Syrian Sanctions Regulations, 31 CFR part 542.

6. FOUR SEASONS DAMASCUS (a.k.a. DAMASCUS FOUR SEASONS; a.k.a. FOUR

SEASONS HOTEL DAMASCUS), Shukri Al Quatli Street, P.O. Box 6311, Damascus, Syria [SYRIA] (Linked To: FOZ, Samer).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, directly or indirectly, Samer FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, directly or indirectly, Samer FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13582.

7. FOZ FOR TRADING (a.k.a. FOZ TRADING), Syria [SYRIA] (Linked To: AMAN HOLDING COMPANY).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, directly or indirectly, AMAN HOLDING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, directly or indirectly, AMAN HOLDING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

8. LANA TV, Beirut, Lebanon [SYRIA] (Linked To: FOZ, Samer).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, directly or indirectly, Samer FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, directly or indirectly, Samer FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13582.

9. MAINPHARMA (a.k.a. MEENPHARMA), Syria [SYRIA] (Linked To: AMAN HOLDING COMPANY).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, directly or indirectly, AMAN HOLDING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, directly or indirectly, AMAN HOLDING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

10. MENA CRYSTAL SUGAR COMPANY LIMITED (a.k.a. M.E.N.A. CRYSTAL SUGAR COMPANY; a.k.a. M.E.N.A. SUGAR COMPANY; a.k.a. MENA SUGAR COMPANY), Homs, Syria [SYRIA] (Linked To: AMAN HOLDING COMPANY).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, directly or indirectly, AMAN HOLDING COMPANY an entity whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, directly or indirectly, AMAN HOLDING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

11. ORIENT CLUB, Al Najmeh Square—Abou Romaaneh 6737, Damascus, Syria [SYRIA] (Linked To: FOZ, Samer).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, directly or indirectly, Samer FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, directly or indirectly, Samer FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13582.

12. SILVER PINE (a.k.a. SILVER PINE DMCC), Jumeirah Lake Tower, Cluster 1, Platinum Tower, Office 2405, P.O. Box 36102, Dubai, United Arab Emirates [SYRIA] (Linked To: FOZ, Husen).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, directly or indirectly, Husen FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13573.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, directly or indirectly, Husen FOZ, a person whose property and interests in property are blocked pursuant to E.O. 13582.

13. SYNERGY SAL OFFSHORE, Azarieh street—Azarieh building, Beirut, Lebanon [SYRIA].

Designated pursuant to section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, BANIAS REFINERY COMPANY, an entity identified as meeting the definition of the GOVERNMENT OF SYRIA as set forth in section 8(d) of E.O. 13582 and section 542.305 of the Syrian Sanctions Regulations, 31 CFR part 542.

Dated: June 14, 2019.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–13211 Filed 6–20–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning directed withholding and deposit verification, central withholding agreement, and Application for Central Withholding Agreement Less than $10,000.

DATES: Written comments should be received on or before August 20, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Directed Withholding and Deposit Verification, Central Withholding Agreement, and Application for Central Withholding Agreement Less than $10,000.

OMB Number: 1545–2102.

Form Number: Form 13920, 13930, and 13930–A.

Abstract: Central Withholding Agreement (CWA) is a tool that can help nonresident entertainers and athletes who plan to work in the United States and provides for withholdings at a graduated rate. Form 13930 will be used by an individual who wishes to have a Central Withholding Agreement (CWA). Starting October 1, 2018, NRAAEs must have U.S. gross income of at least $10,000 (including income estimated on the CWA application budget) before the NRAAE is eligible to apply for a withholding agreement using Form 13930. NRAAEs having gross income of less than $10,000 may apply for a CWA with no expenses under the simplified procedures using Form 13930–A. Starting October 1, 2018, NRAAEs must have U.S. gross income of at least $10,000 (including income estimated on the CWA application budget) before the NRAAE is eligible to apply for a withholding agreement using Form 13930. NRAAEs having gross income of less than $10,000 may apply for a CWA with no expenses under the simplified procedures using Form 13930–A. Form 13920 is used by withholding agents to verify to IRS that required deposits were made and give the amount of such deposits.

Current Actions: Form 13930–A is being added to the above OMB approval number.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms and non-profit institutions.

Form 13930

Estimated Number of Responses: 2,300.

Estimated Time per of Response: 12 hours.

Form 13930–A

Estimated Number of Responses: 1,000.

Estimated Time per Response: 10.5 hours.

Form 13920

Estimated Number of Responses: 8,100.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours (3 forms): 22,400 hours.

The following paragraph applies to all of the collections of information covered by this notice.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 18, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–13210 Filed 6–20–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Intent To Adopt the Final Environmental Impact Statement/Final Environmental Impact Report, Supplemental Environmental Impact Statement, and Section 130(c) Technical Memorandum for the Westside Purple Line Extension Project

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Intent.

SUMMARY: VA announces its intent to adopt the following National Environmental Policy Act (NEPA) documents developed by the Federal Transit Administration and the Los Angeles County Metropolitan Transportation Authority (LA Metro) related to Westside Purple Line Extension Project: March 2012 Final Environmental Impact Statement/Final Environmental Impact Report (EIS/EIR), November 2017 Final Supplemental Environmental Impact Statement (SEIS), and the December 2018 Section 130(c) Technical Memorandum (''Purple Line NEPA Documents''). Pursuant to NEPA of 1969, as amended, and the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA, VA may adopt another Federal agency's NEPA documents if the proposed actions of each agency are substantially the same.

VA's Proposed Action is the granting of (i) surface level permanent easements comprised of approximately 2.19 acres; (ii) surface level temporary construction easements comprised of approximately 6.56 acres; and (iii) additional subsurface permanent and construction easements to LA Metro in conjunction with the Westwood/VA Hospital subway station which involves the construction, maintenance, repair, operation of a surface level and subsurface level transit facility, a subsurface level transit tunnel, entrances and other appurtenances including but not limited to tunnels, supports, rails, air circulation systems, air pressure relief systems and equipment, blast relief shafts, safety and emergency systems, electric transmission, and communication lines (the ''Transit Facilities''). The Transit Facilities will be on the VA West Los Angeles Campus located at 11301 Wilshire Boulevard, Los Angeles, California 90073, adjacent to the Main Hospital (Building 500), as part of Section 3 of the Westside Purple Line Extension. VA has the authority to grant easements for the Transit Facilities pursuant to the West Los Angeles Leasing Act of 2016 (Pub. L. 114–226). The Purple Line NEPA documents evaluate the construction and operation of the Westside Purple Line Extension on the VA West Los Angeles Campus. After thorough review and consideration, VA has concluded that the Purple Line NEPA documents sufficiently identify and evaluate the environmental impacts related to its proposed action.

This Notice informs the reader of the availability of the Final Purple Line NEPA documents and of VA's intent to adopt the Purple Line NEPA documents for VA's proposed action. VA will publish a Record of Decision no sooner than 30 days after publication of the Environmental Protection Agency's Notice of Intent in the **Federal Register**.

Availability: Copies of the 2012 EIS/EIR, 2017 SEIS, and the Section 130(c) Technical Memorandum related to Westside Purple Line Extension are available for public review at:

• *VA GLAHS WLA Medical Center:* 11301 Wilshire Boulevard, Los Angeles, CA 90073, Building 500/Room 6429K; and

• On the website at *www.losangeles.va.gov/masterplan/.*

FOR FURTHER INFORMATION CONTACT: Glenn Elliott—Environmental Officer, Construction Facilities Management Office, Department of Veterans Affairs, 425 I Street NW, Washington, DC 20001; *Glenn.Elliott@va.gov.*

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on June 13, 2019, for publication.

Dated: June 18, 2019.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2019–13218 Filed 6–20–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0586]

Agency Information Collection Activity: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–72, Technical Industry Standards

AGENCY: The Office of Management (OM), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 20, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Rafael Taylor, Office of Acquisition and Logistics (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Rafael.Taylor@va.gov.* Please refer to ''OMB Control No. 2900–0586'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM functions, including whether the information will have practical utility; (2) the accuracy of OM estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Authority: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521).

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–72, Technical Industry Standards.

OMB Control Number: 2900–0586.

Type of Review: Renewal with changes of a currently approved collection.

Abstract: This Paperwork Reduction Act (PRA) submission seeks renewal with changes of Office of Management and Budget (OMB) approval No. 2900–0586 as follows: Due to the decreased number of respondents, the total annual burden hours decreased by 666, from 1,225 to 559. However, the average burden time per response has not changed.

VAAR clause 852.211–72, Technical Industry Standards, requires that items offered for sale to VA under the solicitation conform to certain technical industry standards, such as Underwriters Laboratory (UL) or the USDA Institutional Meat Purchase Specification (IMPS) and that the contractor furnish evidence to VA that the items meet that requirement. The evidence is normally in the form of a tag or seal affixed to the item, such as the UL tag on an electrical cord or a label on beef product. In most cases, this requires no additional effort on the part of the contractor, as the items come from the factory with the tags already in place, as part of the manufacturer's standard manufacturing operation. Occasionally, for items not already meeting standards or for items not previously tested, a contractor will have to furnish a certificate from an acceptable laboratory certifying that the items furnished have been tested in accordance with, and conform to, the specified standards. Only firms whose products have not previously been tested to ensure the products meet the industry standards required under the solicitation and contract will be required to submit a separate certificate. The information will be used to ensure that the items being purchased meet minimum safety standards and to protect VA employees, VA beneficiaries, and the public.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 559 Burden Hours.

Estimated Average Burden per Respondent: 30 Minutes.

Frequency of Response: One per awarded contract.

Estimated Number of Respondents: 1,118.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–13256 Filed 6–20–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Friday,

No. 120 June 21, 2019

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9866]

RIN 1545–BO54; 1545–BO62

Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations that provide guidance to determine the amount of global intangible low-taxed income included in the gross income of certain United States shareholders of foreign corporations, including United States shareholders that are members of a consolidated group. This document also contains final regulations relating to the determination of a United States shareholder's pro rata share of a controlled foreign corporation's subpart F income included in the shareholder's gross income, as well as certain reporting requirements relating to inclusions of subpart F income and global intangible low-taxed income. Finally, this document contains final regulations relating to certain foreign tax credit provisions applicable to persons that directly or indirectly own stock in foreign corporations.

DATES:

Effective date: These regulations are effective on June 21, 2019.

Applicability dates: For dates of applicability, see §§ 1.78–1(c), 1.861–12(k), 1.951–1(i), 1.951A–7, 1.1502–51(g), 1.6038–2(m), and 1.6038–5(e).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations §§ 1.951–1, 1.951A–0 through 1.951A–7, 1.6038–2, and 1.6038–5, Jorge M. Oben at (202) 317–6934; concerning the regulations §§ 1.951A–1(e) and 1.951A–3(g), Jennifer N. Keeney at (202) 317–5045; concerning the regulations §§ 1.1502–12, 1.1502–32, and 1.1502–51, Katherine H. Zhang at (202) 317–6848 or Kevin M. Jacobs at (202) 317–5332; concerning the regulations §§ 1.78–1, 1.861–12, 1.861–12T, and 1.965–7, Karen J. Cate at (202) 317–6936 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 951A was added to the Internal Revenue Code (the ''Code'') [1] by the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054, 2208 (2017) (the ''Act''), which was enacted on December 22, 2017. On October 10, 2018, the Department of the Treasury (''Treasury Department'') and the IRS published proposed regulations (REG–104390–18) under sections 951, 951A, 1502, and 6038 in the **Federal Register** (83 FR 51072) (the ''proposed regulations''). A public hearing on the proposed regulations was held on February 13, 2019. The Treasury Department and the IRS also received written comments with respect to the proposed regulations.

In addition, on December 7, 2018, the Treasury Department and the IRS published proposed regulations (REG–105600–18) relating to foreign tax credits in the **Federal Register** (83 FR 63200) (''foreign tax credit proposed regulations''). A public hearing on these regulations was scheduled for March 14, 2019, but it was not held because there were no requests to speak. However, the Treasury Department and the IRS received written comments with respect to the foreign tax credit proposed regulations. Certain rules in the foreign tax credit proposed regulations are being finalized in this Treasury decision to ensure that the applicability dates of these rules coincide with the applicability dates of the statutory provisions to which they relate. See section 7805(b)(2). The rules being finalized relate to §§ 1.78–1, 1.861–12(c)(2), and 1.965–7(e). See part XI of the Summary of Comments and Explanation of Revisions section.

Comments outside the scope of this rulemaking are generally not addressed but may be considered in connection with future guidance projects. In this regard, the Treasury Department and the IRS expect that future guidance will address issues concerning the allocation and apportionment of expenses in order to determine a taxpayer's foreign tax credit limitation under section 904. All written comments received in response to the proposed regulations and the foreign tax credit proposed regulations are available at *www.regulations.gov* or upon request. Terms used but not defined in this preamble have the meaning provided in these final regulations.

[1] Except as otherwise stated, all section references in this preamble are to the Internal Revenue Code.

Summary of Comments and Explanation of Revisions

I. Overview

The final regulations retain the basic approach and structure of the proposed regulations and foreign tax credit proposed regulations, with certain revisions. This Summary of Comments and Explanation of Revisions section discusses those revisions as well as comments received in response to the solicitation of comments in the notices of proposed rulemaking accompanying those regulations.

II. Comments and Revisions to Proposed § 1.951–1—Amounts Included in Gross Income of United States Shareholders

A. Hypothetical Distribution of Allocable E&P

A United States shareholder (''U.S. shareholder'') who owns stock of a foreign corporation on the last day of the foreign corporation's taxable year on which the foreign corporation is a controlled foreign corporation (''CFC'') includes in gross income its ''pro rata share'' of the CFC's subpart F income (as defined in section 952) for the taxable year. See section 951(a)(1) and § 1.951–1(a). In general, a U.S. shareholder's pro rata share of subpart F income is determined based on its proportionate share of a hypothetical distribution of all the current earnings and profits (''E&P'' and ''current E&P'') of the CFC. See section 951(a)(2)(A) and § 1.951–1(b)(1)(i) and (e)(1). A U.S. shareholder's pro rata share of tested income (as defined in section 951A(c)(2)(A) and § 1.951A–2(b)(1)), tested loss (as defined in section 951A(c)(2)(B)(i) and § 1.951A–2(b)(2)), qualified business asset investment (''QBAI'') (as defined in section 951A(d)(1) and § 1.951A–3(b)), tested interest expense (as defined in § 1.951A–4(b)(1)), and tested interest income (as defined in § 1.951A–4(b)(2)) (each a ''tested item'') generally are also determined based on a hypothetical distribution of current E&P, with certain modifications to account for the differences between each tested item and subpart F income. See section 951A(e)(1) and § 1.951A–1(d).

For purposes of the hypothetical distribution, the proposed regulations define ''current E&P'' for a taxable year as the greater of (i) the E&P of the corporation for the taxable year determined under section 964, or (ii) the sum of the subpart F income (as determined under section 952, as increased under section 951A(c)(2)(B)(ii) and proposed § 1.951A–6(d)) and the tested income of the corporation for the taxable year. See proposed § 1.951–1(e)(1)(ii). One comment asserted that using the term ''current earnings and profits'' for this purpose is confusing because the definition differs significantly from the definition of ''earnings and profits'' provided in section 964(a), and therefore suggested using a different term for this purpose. In response to this comment, the final regulations replace the term ''current earnings and profits'' with ''allocable earnings and profits'' (''allocable E&P'').

B. Pro Rata Share Anti-Abuse Rule

The proposed regulations provide that any transaction or arrangement that is part of a plan a principal purpose of which is the avoidance of Federal income taxation, including, but not limited to, a transaction or arrangement to reduce a U.S. shareholder's pro rata share of the subpart F income of a CFC, which transaction or arrangement would otherwise avoid Federal income taxation, is disregarded in determining such U.S. shareholder's pro rata share of the subpart F income of the corporation (the ''pro rata share anti-abuse rule''). See proposed § 1.951–1(e)(6). The pro rata share anti-abuse rule also applies in determining the pro rata share of each tested item of a CFC for purposes of determining a U.S. shareholder's global intangible low-taxed income (''GILTI'') inclusion amount under section 951A(a) and § 1.951A–1(b). See id.

Several comments suggested that the pro rata share anti-abuse rule is overbroad and could be interpreted to apply to nearly all transactions, arrangements, or tax elections that reduce the pro rata share amounts of a U.S. shareholder. In particular, comments noted that, under one interpretation of the rule, a U.S. shareholder that disposes of CFC stock could be required indefinitely to include its ''pro rata share'' of the CFC's subpart F income or tested items with respect to such stock. These comments recommended that the final regulations clarify the scope of the rule and, in particular, provide that the rule applies only to reallocate subpart F income and tested items of a CFC as of a hypothetical distribution date among persons that own, directly or indirectly, shares of the CFC on such date. According to these comments, the rule, as narrowed in this manner, could not apply to cause a U.S. person that disposes of stock of a CFC before a hypothetical distribution date to be treated as having a pro rata share of the CFC's subpart F income or tested items as of such date by reason of such stock.

The Treasury Department and the IRS agree that the scope of the pro rata share anti-abuse rule should be clarified. Accordingly, the final regulations clarify that the rule applies only to require appropriate adjustments to the allocation of allocable E&P that would be distributed in a hypothetical distribution with respect to any share outstanding as of the hypothetical distribution date. See § 1.951–1(e)(6). Thus, under the rule, if applicable, adjustments will be made solely to the allocation of allocable E&P in the hypothetical distribution between shareholders that own, directly or indirectly, stock of the CFC as of the relevant hypothetical distribution date. As clarified, the rule will not apply to adjust the allocable E&P allocated to a shareholder by reason of a transfer of CFC stock, except by reason of a change to the distribution rights with respect to stock in connection with such transfer (for example, an issuance of a new class of stock, including by recapitalization).

Other comments suggested that the final regulations limit the pro rata share anti-abuse rule to transactions or arrangements that lack economic substance or are artificial, or only to transactions or arrangements that result in non-economic allocations that shift subpart F income or tested items away from a U.S. shareholder. One comment suggested that the rule should apply only to enumerated transactions identified by the Treasury Department and the IRS as being abusive, and another comment suggested that the regulations should include examples illustrating transactions to which the pro rata share anti-abuse rule would or would not apply.

The Treasury Department and the IRS do not adopt these recommendations. Transactions that lack economic substance or are artificial would typically be disregarded under general tax principles, and non-economic allocations would generally be addressed through the facts and circumstances approach of § 1.951–1(e)(3) (as discussed in part II.C of this Summary of Comments and Explanation of Revisions section), such that limiting the pro rata share anti-abuse rule in the manner recommended could render it superfluous. Moreover, the concerns underlying the rule may arise in non-artificial transactions, or transactions with substance, that would be respected under general tax principles. In addition, attempting to specifically identify all the transactions covered by the rule or to specify such transactions by example would be impractical and inconsistent with one of the purposes underlying any anti-avoidance rule—that is, to deter the development and implementation of new transactions or arrangements intended to avoid the operative rule.

Another comment recommended an exception to the pro rata share anti-abuse rule for transactions entered into with unrelated parties and for transactions entered into with related parties located in the same country of tax residence as the relevant CFC. The comment also recommended a ''small business'' exception for U.S. shareholders with worldwide gross receipts under $25 million. The Treasury Department and the IRS have determined that the policy concerns underlying the rule can be implicated by transactions that involve unrelated parties, such as accommodation parties (for instance, a financial institution) that hold stock with certain distribution rights in order to reduce an unrelated U.S. shareholder's pro rata share of subpart F income or tested items. Further, these concerns can arise regardless of whether the parties involved are located in the same country of tax residence as the CFC. Finally, the Treasury Department and the IRS have concluded that the level of gross receipts of the shareholders is not relevant to, and therefore does not justify, an exception to the rule. Any administrative burden on small businesses would not stem from the rule itself but rather from engaging in a transaction a principal purpose of which is to avoid Federal income taxation. Accordingly, these recommendations are not adopted.

C. Facts and Circumstances Approach

Section 1.951–1(e)(3)(ii) of the existing regulations provides special rules applicable to CFCs with two or more classes of stock with discretionary distribution rights. Under these rules, the allocation of current E&P is primarily based on the relative fair market value of the stock with discretionary distribution rights. The preamble to the proposed regulations notes that this fair market value allocation method had been the basis of certain attempted avoidance structures. Accordingly, the proposed regulations adopt a facts and circumstances approach in allocating current E&P in a hypothetical distribution between multiple classes of stock, including stock with discretionary distribution rights. See proposed § 1.951–1(e)(3). The proposed regulations provide that, where appropriate, the relative fair market value of the stock may still be taken into account, but as one of several factors, none of which is dispositive. See id.

A comment asserted that the facts and circumstances approach set forth in the proposed regulations is a vague and subjective standard that would create uncertainty, while the fair market value approach in the existing regulations for stock with discretionary distribution rights is a long-standing and objective standard. The comment further noted that the preamble to the 2005 Treasury decision that adopts the fair market value approach specifically rejects the facts and circumstances approach, stating that ''the interests of sound tax policy and administration are served by requiring the value-based allocation.'' TD 9222, 70 FR 49864 (August 25, 2005). The comment recommended that the fair market value approach be retained in the final regulations, in lieu of the proposed facts and circumstances approach, for purposes of determining the pro rata share of subpart F income and tested items.

The Treasury Department and the IRS have determined, based on experience administering the fair market value approach, that a facts and circumstances approach, in which the fair market value of stock is relevant but not determinative, would be a more reliable method for determining a U.S. shareholder's pro rata share of subpart F income (and tested items) than the fair market value approach. While fair market value is easily determinable for publicly traded stock, determining the fair market value of privately-held stock is more difficult and typically requires a determination of the stock's rights to distributions of current and accumulated E&P and capital, as well as the voting rights with respect to such stock. In contrast, under section 951(a)(2) and § 1.951–1(b)(1), a shareholder's pro rata share of subpart F income is determined based solely on a hypothetical distribution of subpart F income for the taxable year. Furthermore, the amount of subpart F income treated as distributed in the hypothetical distribution is determined under § 1.951–1(e) based on a distribution of allocable E&P. Thus, the most relevant attribute of any share of CFC stock for purposes of the hypothetical distribution is its economic rights with respect to the allocable E&P of the CFC, which is generally determined by reference to its current E&P. Generally, a share's voting rights, rights to distributions of E&P accumulated before the current year, and rights to capital, all of which are also taken into account in determining fair market value, are not relevant to the hypothetical distribution of allocable E&P, and therefore a fair market value approach can distort the determination required under section 951(a)(2) and § 1.951–1(b)(1). A more flexible facts and circumstances approach that considers fair market value as a factor can also take into account other factors related to the expected distributions of allocable E&P with respect to such stock, without taking into account capital liquidation rights and other factors that are not relevant to the distribution of allocable E&P. Accordingly, the final regulations do not adopt this recommendation.

D. Modifications to Example 4

The proposed regulations provide that no amount of current E&P is distributed in the hypothetical distribution with respect to a particular class of stock to the extent that a distribution of such amount would constitute a redemption of stock (even if the redemption would be treated as a dividend under sections 301 and 302(d)), a distribution in liquidation, or a return of capital. See proposed § 1.951–1(e)(4)(i). The proposed regulations include an example to illustrate the application of this rule. See proposed § 1.951–1(e)(7)(v) *Example 4.* A comment asserted that proposed § 1.951–1(e)(4)(i) and the example illustrating the rule are confusing because, given the definition of current E&P in the proposed regulations, the hypothetical distribution would typically not give rise to a return of capital (other than through a redemption).

This rule is not intended to refer to the consequences of the hypothetical distribution itself (for example, the extent to which it could give rise to a return of capital), but rather is intended to provide that terms of the stock or related agreements and arrangements that could give rise to redemptions, liquidations, or returns of capital if actually exercised (or otherwise taken into account) are not taken into account for purposes of the hypothetical distribution. The final regulations and the related example are clarified to reflect this intent. See § 1.951–1(e)(4)(i) and § 1.951–1(e)(7)(v) *Example 4.* Similarly, the final regulations clarify that the facts and circumstances taken into account in determining the distribution rights of a class of stock do not include actual distributions (or any amount treated as a dividend) made during the taxable year that includes the hypothetical distribution date. See § 1.951–1(e)(3). Such distributions (or dividends) are not relevant in determining a class of stock's economic rights and interest in the allocable E&P (which are not reduced by actual distributions during the taxable year) as of the hypothetical distribution date.

E. Application of Section 951(a)(2)(B) to Subpart F Income and Tested Income in the Same Taxable Year

Under section 951(a)(2)(B), a U.S. shareholder's pro rata share of subpart F income with respect to stock for a taxable year (as determined under section 951(a)(2)(A)) is reduced by the amount of distributions received by any other person during the year as a dividend with respect to the stock, subject to a limitation based on the period of the taxable year in which the shareholder owned the stock within the meaning of section 958(a). Section 951A(e)(1) provides that the pro rata share of tested income, tested loss, and QBAI is determined under the rules of section 951(a)(2) in the same manner as such section applies to subpart F income. Accordingly, the proposed regulations provide that a U.S. shareholder's pro rata share of tested income is determined under section 951(a)(2) and § 1.951–1(b) and (e), generally substituting ''tested income'' for ''subpart F income'' each place it appears. See proposed § 1.951A–1(d)(2).

Because section 951(a)(2)(B) applies for purposes of determining the pro rata share of both subpart F income and tested income, the proposed regulations could be interpreted as permitting a dollar-for-dollar reduction under section 951(a)(2)(B) in both a U.S. shareholder's pro rata share of subpart F income and its pro rata share of tested income. The Treasury Department and the IRS have determined that this would be an inappropriate double benefit that is not contemplated under section 951(a)(2)(B) and section 951A(e)(1). Accordingly, the regulations under section 951(a)(2)(B) are revised to clarify that a dividend received during the taxable year by a person other than the U.S. shareholder reduces the U.S. shareholder's pro rata share of subpart F income and its pro rata share of tested income in the same proportion as its pro rata share of each amount bears to its aggregate pro rata share of both amounts. See § 1.951–1(b)(1)(ii).

The examples in § 1.951–1(b)(2) are modified solely to illustrate the application of the revised rule in § 1.951–1(b)(1) and to conform to the terminology in the final regulations. The Treasury Department and the IRS are studying the application of section 951(a)(2)(A) and (B) in certain cases that may lead to inappropriate results, for example, due to the concurrent application of the provisions. In addition, the Treasury Department and the IRS are studying the application of section 951(a)(2)(B) with respect to dividends paid to foreign persons, dividends that give rise to a deduction under section 245A(a), and dividends paid on stock after the disposition of such stock by a U.S. shareholder. Comments are requested in this regard.

F. Revisions to Cumulative Preferred Stock Rule

The proposed regulations provide a special rule applicable to preferred shares with accrued but unpaid dividends that do not compound annually at or above the applicable Federal rate (''AFR'') under section 1274(d)(1) (''cumulative preferred stock rule''). See proposed § 1.951–1(e)(4)(ii). If the cumulative preferred stock rule applies with respect to stock, the current E&P allocable to the stock may not exceed the amount of dividends actually paid during the taxable year with respect to the stock plus the present value of the unpaid current dividends with respect to the stock determined by using the AFR that applies on the date the stock is issued for the term from such issue date to the mandatory redemption date and assuming the dividends will be paid at the mandatory redemption date. See id.

A comment stated that it is unclear whether the applicability of the cumulative preferred stock rule is determined based on the AFR as of the issuance date or, alternatively, the AFR for the current year. The comment suggested that, because the amount of the preferred dividend determined under the cumulative preferred stock rule is based on the AFR as of the issue date, for consistency, the applicability of the rule should be determined by reference to the AFR as of the issue date as well. The Treasury Department and the IRS agree with this comment, and the final regulations are revised accordingly. See § 1.951–1(e)(4)(ii).

The proposed regulations provide that the amount of any arrearage on cumulative preferred stock is determined taking into account the time value of money principles in the cumulative preferred stock rule. See proposed § 1.951–1(e)(4)(iii). A comment recommended that the rule be clarified to reference the calculation of the present value of the unpaid current dividends described in the cumulative preferred stock rule. The Treasury Department and the IRS agree with this comment, and the final regulations are revised accordingly. See § 1.951–1(e)(4)(iii).

The proposed regulations contain a special rule for purposes of sections 951 through 964 to treat a controlled domestic partnership as a foreign partnership to determine stock ownership in a CFC by a U.S. person for purposes of section 958(a) if certain conditions are met. See proposed § 1.951–1(h). A comment suggested that because the proposed regulations define a ''controlled domestic partnership'' by reference to a specific U.S. shareholder, the rule could be read to apply only with respect to that shareholder but not with respect to other partners of the controlled domestic partnership, for which the partnership would therefore still be treated as domestic. The comment requested that the final regulations clarify that the treatment as a foreign partnership is with respect to all partners of the partnership. The rule, if applicable, is intended to treat a domestic partnership as a foreign partnership with respect to all its partners. The final regulations revise the definition of controlled domestic partnership to clarify the scope of the rule. See § 1.951–1(h)(2); see also § 1.965–1(e)(2). A change is also made to § 1.951–1(h) to conform to the change in the final regulations to the treatment of domestic partnerships for purposes of section 951A. See part VII.C of this Summary of Comments and Explanation of Revisions section.

Finally, certain regulations have been revised to reflect the repeal of section 954(f) (regarding foreign base company shipping income) and section 955 (regarding foreign investments in less developed countries). See Public Law 108–357, 415(a)(2) (2004) and Public Law 115–97, 14212(a) (2017). The Treasury Department and the IRS intend to revise other regulations to reflect the repeal of these provisions in future guidance projects.

III. Comments and Revisions to Proposed § 1.951A–1—General Provisions

A. CFC Inclusion Date

The proposed regulations provide that, for purposes of determining the GILTI inclusion amount of a U.S. shareholder for a U.S. shareholder inclusion year, the U.S. shareholder takes into account its pro rata share of a tested item with respect to a CFC for the U.S. shareholder inclusion year that includes a CFC inclusion date with respect to the CFC. See proposed § 1.951A–1(d)(1). Under the proposed regulations, the term ''U.S. shareholder inclusion year'' means a taxable year of a U.S. shareholder that includes a CFC inclusion date of a CFC of the U.S. shareholder, the term ''CFC inclusion date'' means the last day of a CFC inclusion year on which a foreign corporation is a CFC, and the term ''CFC inclusion year'' means any taxable year of a foreign corporation beginning after December 31, 2017, at any time during which the corporation is a CFC. See proposed § 1.951A–1(e)(1), (2) and (4).

Several comments noted that, under certain circumstances, the requirement that a U.S. shareholder take into account its pro rata share of a CFC's tested items for a U.S. shareholder inclusion year that includes a CFC inclusion date could have the effect of requiring a U.S. shareholder to take into account its pro rata share of the CFC's tested items for a U.S. shareholder inclusion year that does not include the last day of the CFC inclusion year. This could happen, for instance, if a U.S. person with a taxable year ending December 31, 2019, sells a wholly-owned foreign corporation with a taxable year ending November 30, 2020, to a foreign person on December 1, 2019 and, as a result of the sale, the foreign corporation ceases to be a CFC; in that case, under the proposed regulations, the CFC inclusion date with respect to the foreign corporation would be December 1, 2019, whereas the CFC inclusion year of the foreign corporation would not end until November 30, 2020. The comments raised several concerns, in particular, that the U.S. person in this example would be unable to determine its pro rata share of any tested item of the foreign corporation as of December 31, 2019, since the foreign corporation's tested items could not be determined until November 30, 2020. The comments also noted that the proposed regulations' definition of CFC inclusion date was inconsistent with section 951A(e)(1), which provides that the pro rata share of certain amounts is taken into account in the taxable year of the U.S. shareholder in which or with which the taxable year of the CFC ends. The comments recommended that the relevant definitions be revised to accord with section 951A(e)(1).

The Treasury Department and the IRS agree with these comments. Accordingly, the final regulations provide that a U.S. shareholder takes into account its pro rata share of a tested item of a CFC in the U.S. shareholder inclusion year that includes the last day of the CFC inclusion year. See § 1.951A–1(d)(1). However, consistent with sections 951(a)(2) and 951A(e)(1), a U.S. shareholder's pro rata share of each tested item of a CFC is still determined based on the section 958(a) stock owned by the shareholder on the last day of the CFC's taxable year on which it is a CFC (the ''hypothetical distribution date''). See §§ 1.951–1(e)(1)(i) and 1.951A–1(f)(3). The term ''hypothetical distribution date'' in the final regulations has the same meaning as the term ''CFC inclusion date'' in the proposed regulations.

B. Pro Rata Share of Certain Tested Items

1. Pro Rata Share of QBAI

The proposed regulations provide that, in general, a U.S. shareholder's pro rata share of the QBAI of a tested income CFC is proportionate to the U.S. shareholder's pro rata share of the tested income of the tested income CFC for the CFC inclusion year. See proposed § 1.951A–1(d)(3)(i). However, the proposed regulations provide that, to the extent the amount of a tested income CFC's QBAI is greater than ten times its tested income for the year (that is, the point at which the shareholder's deemed tangible income return (''DTIR'') attributable to the QBAI would fully offset its pro rata share of the tested income CFC's tested income), the excess QBAI is allocated solely to common shares (and not to preferred shares) (the ''excess QBAI rule''). See proposed § 1.951A–1(d)(3)(ii). The excess QBAI rule is intended to ensure that a shareholder cannot obtain an increase in its DTIR by reason of preferred stock that exceeds the increase in its aggregate pro rata share of tested income from the ownership of the stock. Without the excess QBAI rule, U.S. persons would be incentivized to acquire debt-like preferred stock of CFCs that have significant amounts of QBAI and minimal tested income in order to effectively exempt some or all of the U.S. person's pro rata shares of tested income from other CFCs from taxation under section 951A. The preamble to the proposed regulations requested comments on the approach in the proposed regulations, including the excess QBAI rule, for determining a U.S. shareholder's pro rata share of a CFC's QBAI.

The only comment received with respect to the QBAI allocation approach in the proposed regulations agreed that it was appropriate to limit the allocation of QBAI to a preferred shareholder, because the debt-like claim that a preferred shareholder has on a CFC should not entitle it to an amount of QBAI that could be used to effectively exempt tested income of the shareholder's other CFCs. The comment noted that, in cases where a CFC has minimal tested income and substantial QBAI, the approach in the proposed regulations could result in a common shareholder receiving a pro rata share of QBAI that is disproportionate to its pro rata share of tested income, but acknowledged that this effect would be reversed in future years when the CFC generates more tested income.

The Treasury Department and the IRS agree with the comment that the approach in the proposed regulations achieves the correct result over a multi-year period. Accordingly, the final regulations generally adopt the QBAI allocation rule of the proposed regulations, with certain modifications to the excess QBAI rule to better effectuate the purposes of the rule. Specifically, the final regulations provide that, in the case of a tested income CFC with tested income that is less than ten percent of its QBAI (the tested income CFC's ''hypothetical tangible return''), a shareholder's pro rata share of QBAI is determined based on the shareholder's pro rata share of this hypothetical tangible return. See § 1.951A–1(d)(3)(ii)(A) and (C). A U.S. shareholder's pro rata share of the hypothetical tangible return is determined under the rules for determining the shareholder's pro rata share of tested income, for this purpose treating the hypothetical tangible return as tested income. See § 1.951A–1(d)(3)(ii)(B). In most cases, the excess QBAI rule in the final regulations will produce the same results as the excess QBAI rule in the proposed regulations. However, unlike the excess QBAI rule in the proposed regulations, the application of the excess QBAI rule in the final regulations is not limited to preferred stock.[2] Further, with respect to common stock, by untethering the allocation of excess QBAI from the allocation of tested income, and instead applying a hypothetical distribution model to the excess QBAI, the rule ensures that the reduction under section 951(a)(2)(B) and § 1.951A–1(b)(1)(ii) to a U.S. shareholder's pro rata share of tested income does not result in an excessive reduction to the U.S. shareholder's pro rata share of QBAI. See § 1.951A–1(d)(3)(iii)(C) *Example 3.*

One comment recommended that the final regulations allocate QBAI to convertible preferred stock or participating preferred stock by bifurcating the stock into preferred stock (to the extent of the dividend and liquidation preference) and common stock (to the extent that the participation right is ''in the money''), and then allocating QBAI to each component separately. This issue has been mooted because the determination of a U.S. shareholder's pro rata share of QBAI no longer depends on whether the stock owned by the shareholder is common or preferred. Accordingly, the final regulations do not adopt this recommendation.

Finally, for the avoidance of doubt, the final regulations clarify that the aggregate amount of any tested item (including QBAI) of a CFC for a CFC inclusion year allocated to the CFC's stock cannot exceed the amount of such tested item of the CFC for the CFC inclusion year. See § 1.951A–1(d)(1).

2. Pro Rata Share of Tested Loss

The proposed regulations provide that a CFC's tested loss is allocated based on a hypothetical distribution of an amount of current E&P equal to the amount of tested loss, except that, in general, tested loss is allocated only to common stock. See proposed § 1.951A–1(d)(4)(i)(C). The general rule that tested loss is allocated only to common stock is subject to two exceptions. First, the proposed regulations allocate tested loss to preferred shares to the extent the tested loss reduces the E&P accumulated since the issuance of those preferred shares to an amount below the amount necessary to satisfy any accrued but unpaid dividends with respect to such preferred shares. See proposed § 1.951A–1(d)(4)(ii). Second, when the common stock has no liquidation value, the proposed regulations allocate tested loss to classes of preferred stock with liquidation value in reverse order of priority. See proposed § 1.951A–1(d)(4)(iii). These two exceptions result in tested loss allocations corresponding to changes in the economic value of the CFC stock. The preamble to the proposed regulations requested comments on the proposed approach for determining a U.S. shareholder's pro rata share of a CFC's tested loss, including how (or whether) to allocate tested loss of a CFC when no class of CFC stock has positive liquidation value.

Comments were supportive of the approach taken in the proposed regulations to determine pro rata shares of tested loss because the approach avoids complexity, minimizes the potential for abusive allocations of tested loss, and is consistent with the economic reality that common stock generally bears the risk of loss before preferred stock. One comment that was

[2] When the excess QBAI rule in the final regulations applies to a CFC with preferred stock, the increase to the preferred shareholder's DTIR by reason of the preferred stock generally will be limited to an amount equal to its pro rata share of tested income, consistent with the purpose of the rule in the proposed regulations. This is the case because the formula for determining the preferred shareholder's pro rata share of QBAI (that is, multiplying the CFC's QBAI by the ratio that such shareholder's pro rata share of the hypothetical tangible return bears to the CFC's total hypothetical tangible return) will yield a product that equals 10 times that shareholder's pro rata share of tested income. For an illustration, see § 1.951A–1(d)(3)(iii)(B) *Example 2.*

supportive of the approach in the proposed regulations suggested a possible alternative approach of allocating tested loss to preferred shares to the extent the preferred shares were allocated subpart F income. However, the comment noted that the approach of the proposed regulations is simpler and that the suggested approach would require additional rules to ensure that corresponding allocations of tested income were made in future periods to the preferred shares to reflect an actual payment of a dividend to the preferred shares. The Treasury Department and the IRS agree with the comment that the approach for allocating tested loss in the proposed regulations is simpler and that the suggested approach would require adjustments to the pro rata share rules for tested income as well, resulting in more complex tracking of previous year pro rata allocations for CFCs and their shareholders to determine current year allocations. Accordingly, the suggestion is not adopted.

One comment recommended that if no class of stock has liquidation value, the tested loss should be allocated first to any shareholders that hold guaranteed debt of the CFC, and then to the most senior class of common stock, unless another class of stock will in fact bear the economic loss. The Treasury Department and the IRS have determined, based on experience with pro rata share rules in the subpart F context, that the facts and circumstances approach provides a flexible and appropriate allocation of tested loss, including in cases where no class of stock has liquidation value. Therefore, this comment is not adopted.

IV. Comments and Revisions to Proposed § 1.951A–2—Tested Income and Tested Loss

A. Determination of Gross Income and Allowable Deductions

For purposes of determining tested income or tested loss, gross tested income is reduced by deductions (including taxes) properly allocable to the gross tested income (or which would be properly allocable to gross tested income if there were such gross income) under rules similar to the rules of section 954(b)(5). See section 951A(c)(2)(A)(ii). The proposed regulations provide that, for purposes of determining tested income and tested loss, the gross income and allowable deductions of a CFC for a CFC inclusion year are determined under the rules of § 1.952–2 for determining the subpart F income of a CFC. See proposed § 1.951A–2(c)(2). Section 1.952–2 provides rules for determining gross income and taxable income of a foreign corporation. For this purpose, and subject to certain exceptions, these rules generally treat foreign corporations as domestic corporations. See § 1.952–2(a)(1) and (b)(1).

The preamble to the proposed regulations requested comments on the application of § 1.952–2 for purposes of determining subpart F income, tested income, and tested loss, including whether other approaches for determining tested income and tested loss, or whether additional modifications to § 1.952–2 for purposes of calculating tested income and tested loss, would be appropriate. Several comments were received in response to this request. The comments generally supported applying § 1.952–2 for purposes of determining tested income. However, a number of comments requested modifications to, or clarifications regarding, the application of § 1.952–2. Some comments suggested that § 1.952–2 be revised for purposes of determining tested income and tested loss to allow the use of net operating loss carryforwards under section 172 and net capital losses subject to limits under section 1212. Another comment requested that the Treasury Department and the IRS provide a list of specific deductions allowed to a CFC that would be disallowed to a domestic corporation, such as under section 162(m) or 280G. The same comment requested clarification that carryforwards of a CFC's disallowed interest deduction under section 163(j)(2) are not subject to any limitation or restrictions. Several comments suggested that section 245A should apply to determine a CFC's subpart F income and tested income and tested loss under § 1.952–2. There is also a concern that § 1.952–2 could be interpreted so expansively as to entitle a CFC to a deduction expressly limited to domestic corporations, such as a deduction under section 250.

The Treasury Department and the IRS intend to address issues related to the application of § 1.952–2, taking into account these comments, in connection with a future guidance project. This guidance is expected to clarify that, in general, any provision that is expressly limited in its application to domestic corporations, such as section 250, does not apply to CFCs by reason of § 1.952–2. The Treasury Department and the IRS continue to study whether, and to what extent, section 245A should apply to dividends received by a CFC and welcome comments on this subject.

Section 1.952–2(b)(2) provides that the taxable income of a CFC engaged in the business of reinsuring or issuing insurance or annuity contracts and which, if it were a domestic corporation engaged in such business, would be taxable as a life insurance company to which subchapter L applies, is generally determined by treating such corporation as a domestic corporation taxable under subchapter L and by applying the principles of §§ 1.953–4 and 1.953–5 for determining taxable income. These regulations, which were promulgated in 1964, have not been updated to reflect current sections 953(a), 953(b)(3), and 954(i). A comment requested that the final regulations confirm that the rules of current sections 953 and 954(i) apply in determining the tested income or tested loss of a CFC described in § 1.952–2(b)(2). The Treasury Department and the IRS agree that the tested income or tested loss of a CFC described in § 1.952–2(b)(2) is calculated in the same manner as its insurance income under sections 953 and 954(i), and the rule is revised accordingly. See § 1.951A–2(c)(2)(i). However, no inference is intended that a CFC may determine reserve amounts based on foreign statement reserves in the absence of a ruling request. See section 954(i)(4)(B)(ii). In this regard, the Treasury Department and the IRS intend to address, in separate guidance, the use of foreign statement reserves for purposes of measuring qualified insurance income under section 954(i).

B. Gross Income Excluded by Reason of Section 954(b)(4)

Section 951A(c)(2)(A)(i)(III) provides that gross tested income does not include any item of gross income excluded from foreign base company income (as defined in section 954) (''FBCI'') or insurance income (as defined in section 953) ''by reason of section 954(b)(4)'' (the ''GILTI high tax exclusion''). The proposed regulations clarify that the GILTI high tax exclusion applies only to items of gross income that are excluded from FBCI or insurance income solely by reason of an election under section 954(b)(4) and § 1.954–1(d)(5). See proposed § 1.951A–2(c)(1)(iii). Thus, this exclusion does not apply to any item of gross income excluded from FBCI or insurance income by reason of an exception other than section 954(b)(4), regardless of the effective rate of foreign tax to which such item is subject.

One comment noted that this clarification is consistent with the language of the GILTI high tax exclusion, which is limited by its terms to income subject to the high tax exception of section 954(b)(4). Several comments, however, requested that the final regulations expand the GILTI high tax exclusion to exclude additional categories of high-taxed income. These comments asserted, based on the legislative history of the Act, that Congress intended that income of a CFC would be subject to tax under the GILTI regime only if it is subject to a low rate of foreign tax. Some of these comments suggested that the exclusion be expanded to apply to high-taxed income that would be FBCI or insurance income but for the application of one or more exceptions in section 954(c), (h), or (i). Others recommended that the final regulations apply the GILTI high tax exclusion to any item of gross income subject to a sufficiently high effective foreign tax rate, regardless of whether such income would be FBCI or insurance income but for an exception. Comments suggested that the Treasury Department and the IRS could exercise their authority under section 951A(f)(1)(B) to treat a GILTI inclusion as a subpart F inclusion that could potentially be excludible, on an elective basis, from FBCI (or insurance income) under section 954(b)(4).

Comments recommending an expansion of the GILTI high tax exclusion to any item of high-taxed income suggested various methods to determine the appropriate foreign tax rate for this purpose. One comment recommended the same threshold as used for the high tax exception for subpart F income under section 954(b)(4)—that is, a rate that is 90 percent of the maximum rate specified in section 11 (21 percent), or 18.9 percent. Another comment recommended a 13.125 percent rate, citing the conference report accompanying the Act that indicated that, in general, no residual U.S. tax would be owed on GILTI subject to a foreign tax rate greater than or equal to that rate. H.R. Rep. No. 115–466, at 627 (2017) (Conf. Rep.) (''Conference Report'').

Other comments suggested that even if the GILTI high tax exclusion is not expanded to take into account all high-taxed income, taxpayers should be permitted to elect to treat income that would otherwise be gross tested income as subpart F income in order to qualify for the exception under section 954(b)(4), for example, through a rebuttable presumption that all income (or alternatively, all high-taxed income) of a CFC is subpart F income. One comment asserted that such a rule would be consistent with taxpayers' historical ability to elect through the choice of transactional or operational structure to subject their CFC income to current taxation under subpart F. For example, the comment stated that a taxpayer could cause a CFC to make a loan to its U.S. shareholder, resulting in an inclusion under section 956, or could intentionally structure its operations in a manner that causes income to be characterized as FBCI. The comment also asserted that a rule that effectively permits a taxpayer to elect into subpart F income is consistent with the regulations under section 954, which permit an election to be made with respect to high-taxed income under section 954(b)(4) notwithstanding that that provision, similar to section 954(a) itself, is expressed as a mandatory rule. See § 1.954–1(d).

The final regulations do not adopt these comments. The Treasury Department and the IRS have declined to exercise regulatory authority under section 951A(f)(1)(B) because that authority relates to the treatment of a GILTI inclusion amount, rather than an item of gross tested income. A GILTI inclusion amount is determined based on a U.S. shareholder's pro rata share of all the tested items of one or more CFCs and, as a result, the determination of the extent to which foreign tax is imposed on any single item of net income for purposes of section 954(b)(4) cannot be made by reference to a GILTI inclusion amount. The final regulations also do not permit taxpayers to elect to treat income that would otherwise be gross tested income as subpart F income in order to qualify for the exception under section 954(b)(4). Unlike section 954(b)(4), nothing in section 954(a) or the legislative history suggests that taxpayers should be permitted to treat income that is not described in section 954(a), such as gross tested income, as FBCI through a rebuttable presumption or otherwise. In addition, this type of rebuttable presumption could give rise to significant administrability concerns. These concerns are discussed further in a notice of proposed rulemaking published in the same issue of the **Federal Register** *addressing an election under section 954(b)(4) with respect to income that would otherwise qualify as tested income.*

The Treasury Department and the IRS continue to believe that the GILTI high tax exclusion, as articulated in the proposed regulations, reflects a reasonable interpretation of section 951A(c)(2)(A)(i)(III) and section 954(b)(4), for the reasons stated in the notice of proposed rulemaking accompanying the proposed regulations. Accordingly, the final regulations retain the GILTI high tax exclusion without modification. See § 1.951A–2(c)(1)(iii). However, the Treasury Department and the IRS are studying, in light of the addition of section 951A by the Act, the appropriate circumstances under which taxpayers should be permitted to make an election under section 954(b)(4), with respect to income that would not be FBCI or insurance income, to exclude such income from gross tested income under the GILTI high tax exclusion using authority other than section 951A(f)(1)(B). In that regard, existing § 1.954–1(d)(1) does not provide the necessary framework for applying the exception under section 954(b)(4) to income that would be gross tested income, such as rules to determine the scope of an item of gross tested income to which the election applies and rules to determine the rate of foreign tax on such items. Therefore, the Treasury Department and the IRS are issuing a notice of proposed rulemaking published in the same issue of the **Federal Register** as these final regulations that will propose a framework under which taxpayers would be permitted to make an election under section 954(b)(4) with respect to income that would otherwise be gross tested income in order to exclude that income from gross tested income by reason of the GILTI high tax exclusion. However, until the regulations described in the separate notice of proposed rulemaking are effective, a taxpayer may not exclude any item of income from gross tested income under section 951A(c)(2)(A)(i)(III) unless the income would be FBCI or insurance income but for the application of section 954(b)(4) and § 1.954–1(d).

C. Gross Income Taken Into Account in Determining Subpart F Income

1. In General

Section 951A(c)(2)(A)(i)(II) provides that gross tested income is determined without regard to any gross income taken into account in determining the subpart F income of the corporation (the ''subpart F exclusion''). Section 952(a) defines ''subpart F income'' as the sum of certain categories of income, including FBCI and insurance income.

Other than with respect to the coordination between the subpart F exclusion and section 952(c) (discussed in part IV.C.2 of this Summary of Comments and Explanation of Revisions section), the proposed regulations do not provide guidance on income that is ''taken into account in determining the subpart F income'' of a CFC within the meaning of the subpart F exclusion. In this regard, the final regulations provide rules for determining gross income included in FBCI and insurance company for purposes of the subpart F exclusion, including by reason of the application of the de minimis and full inclusion rules in section 954(b). See

§ 1.951A–2(c)(4)(ii)(A), (B), and § 1.951A–2(c)(4)(iii)(C); see also part IV.C.3 of this Summary of Comments and Explanation of Revisions section. The final regulations also clarify the circumstances in which the subpart F exclusion applies to less common items included in subpart F income under section 952(a)(3) through (5) (subpart F income resulting from participation in or cooperation with certain international boycotts, payments of illegal bribes, kickbacks, or other payments, or income derived from any country during which section 901(j) applies to that country). See § 1.951A–2(c)(4)(ii)(C) through (E).

2. Coordination With Section 952(c)

a. In General

The amount of subpart F income for a taxable year is subject to the E&P limitation and recapture provisions in section 952(c). Section 952(c)(1)(A) provides that a CFC's subpart F income for any taxable year cannot exceed its E&P for that year. See also § 1.952–1(c)(1). However, section 952(c)(2) provides that, to the extent subpart F income is reduced by reason of the E&P limitation in any taxable year, any excess of the E&P of the corporation for any subsequent taxable year over the subpart F income for that year is recharacterized as subpart F income. See also § 1.952–1(f)(1). An amount recaptured under section 952(c)(2) is treated as subpart F income in the same separate category (as defined in § 1.904–5(a)) as the subpart F income that was subject to the E&P limitation in a prior taxable year. See § 1.952–1(f)(2)(ii).

The Code does not provide a rule that explicitly coordinates the subpart F exclusion with section 952(c), which commenters identified as a source of confusion and potential inconsistency. In order to resolve this ambiguity, the proposed regulations set forth such a coordination rule by providing that the gross tested income and allowable deductions properly allocable to gross tested income are determined without regard to the application of section 952(c) (the ''section 952(c) coordination rule''). See proposed § 1.951A–2(c)(4)(i). Thus, income that would be subpart F income but for the application of the E&P limitation in section 952(c)(1)(A) is excluded from gross tested income by reason of the subpart F exclusion. In addition, income that gives rise to E&P that results in subpart F recapture under section 952(c)(2) is not excluded from gross tested income by reason of the subpart F exclusion. In effect, the section 952(c) coordination rule treats an item of gross income as ''taken into account'' in determining subpart F income to the extent, and only to the extent, that the item would be included in subpart F income absent the application of section 952(c).

The proposed regulations include an example that illustrates this rule. See proposed § 1.951A–2(c)(4)(ii)(A). In the example, in Year 1, FS, a CFC wholly owned by a U.S. shareholder, has $100x of foreign base company sales income, a $100x loss in foreign oil and gas extraction income, and no E&P. In Year 2, FS has gross income of $100x that is not otherwise excluded from the definition of gross tested income in proposed § 1.951A–2(c)(1)(i) through (v), and no allowable deductions, and $100x of E&P. The example concludes that in Year 1 FS has no subpart F income because of the E&P limitation in section 952(c)(1)(A) and no gross tested income because gross tested income is determined without regard to section 952(c). In Year 2, the example concludes that, because FS's E&P ($100x) exceed its Year 2 subpart F income ($0), the subpart F income of Year 1 is recaptured in Year 2 under section 952(c)(2), and FS also has $100x of gross tested income in Year 2 because gross tested income is determined without regard to section 952(c).

One comment agreed that the section 952(c) coordination rule was an appropriate interpretation of the statute, noting that the rule preserves the ability for section 952(c)(2) to recapture subpart F income generated in prior years, while preventing recapture under section 952(c)(2) from permanently exempting gross tested income generated in subsequent years. However, several comments suggested that the section 952(c) coordination rule be withdrawn. These comments asserted that the section 952(c) coordination rule can lead to double taxation because the rule can result in the taxation of an aggregate amount of CFC income in excess of the net economic CFC income over a multi-year period. Some comments further suggested that the section 952(c) coordination rule is contrary to the language of the subpart F exclusion, on the grounds that any income of a CFC that generates E&P that are recharacterized as subpart F income by reason of the E&P recapture rule is ''taken into account in determining the subpart F income'' of the CFC and should therefore be excluded from gross tested income under the subpart F exclusion. Other comments recommended that the section 952(c) coordination rule be retained as it pertains to the E&P limitation rule under section 952(c)(1)(A), but be modified to exclude from its scope the E&P recapture rule of section 952(c)(2). Under that approach, both the subpart F income subject to E&P limitation in a prior year and gross income in a subsequent year that generates E&P giving rise to recapture of subpart F income would be excluded from gross tested income.

The Treasury Department and the IRS have determined that the section 952(c) coordination rule is consistent with the relevant statutory provisions and results in the appropriate amount of income that is subject to tax under sections 951 and 951A. Gross income that would be subpart F income during the current year but for the application section 952(c)(1)(A) is literally ''taken into account'' in determining subpart F income in that it potentially gives rise to future subpart F income by reason of section 952(c)(2). Furthermore, gross tested income is not subject to an E&P limitation analogous to the E&P limitation on subpart F income under section 952(c)(1)(A). In this regard, the determination of tested income under the GILTI regime is based on a taxable income concept, similar to the determination of income earned directly by a U.S. taxpayer, whereas the subpart F regime is rooted in a distributable dividend model, and thus predicated on the existence of E&P. Therefore, for example, a CFC may have $100x of gross tested income but no E&P in a taxable year (due, for instance, to a loss in foreign oil and gas extraction income), and the U.S. shareholder of the CFC (assuming no QBAI or other CFCs) will nonetheless have a $100x GILTI inclusion amount for the taxable year. This is the result under section 951A notwithstanding that the CFC in this case has no net economic income and no E&P for the year. If the same CFC for the same taxable year also has $100x of foreign base company sales income and $100x of E&P related to such income, in addition to the $100x GILTI inclusion amount, the CFC's U.S. shareholder would have a $100x subpart F inclusion. Under these facts, the U.S. shareholder is taxed on an aggregate amount of taxable income of the CFC ($200x) that exceeds the CFC's net economic income and E&P ($100x). In this example, the U.S. shareholder is not subject to tax twice with respect to a single item of income, but rather is subject to tax once with respect to each of two items—the CFC's subpart F income of $100x and the CFC's gross tested income of $100x. The section 952(c) coordination rule merely ensures that the same result obtains whether all items of income and loss arise in a single year (as in this example) or arise in different taxable years (as in the example in proposed § 1.951A–2(c)(4)(ii)(A)).

The Treasury Department and the IRS have also determined that it is not appropriate to exclude the E&P recapture rule from the scope of the section 952(c) coordination rule. Because section 951A contains no analog to the E&P limitation in section 952(c)(1)(A), it also contains no analog to the E&P recapture rule in section 952(c)(2). Without a GILTI recapture rule, the approach recommended by comments would effectively allow prior year losses in categories of income excluded from gross tested income (for example, subpart F income or foreign oil and gas extraction income) to permanently exempt gross tested income in subsequent years. For instance, if, in a taxable year, a CFC has $100x of foreign base company sales income, a $100x loss in foreign base company services income, and thus no subpart F income by reason of the E&P limitation of section 952(c)(1)(A), any gross tested income earned by the CFC in a subsequent year would recapture the foreign base company sales income from the previous year, and thus such gross income would never be subject to section 951A.

In excluding certain categories of income from gross tested income (namely, subpart F income, foreign oil and gas extraction income, and effectively connected income), Congress not only ensured that such income would not be subject to the GILTI regime, but also that losses with respect to such income would not be permitted to reduce income subject to the GILTI regime. Likewise, section 951A(c)(2)(B)(ii) provides that a loss in a category of income subject to the GILTI regime (that is, tested loss) cannot reduce the income subject to the subpart F regime by reason of the E&P limitation rule of section 952(c)(1)(A). See also § 1.951A–6(b) and part VIII.A of this Summary of Comments and Explanation of Revisions section. It is apparent, based on the purpose and structure of section 951A, that Congress intended for the GILTI and subpart F regimes to act as parallel, independent systems of taxation with respect to prescribed categories of CFC income, and losses with respect to one regime (or subject to neither regime) should not be permitted to permanently exempt the income subject to another regime. Therefore, an interpretation of section 952(c) that permits losses related to GILTI-exempt categories of income to reduce gross tested income would be contrary to the purpose and structure of section 951A.

A comment recommended, as an alternative to taking into account section 952(c)(2) recapture in determining gross tested income, that the recapture rules of section 952(c)(2) be modified so that E&P derived from gross tested income does not trigger recapture under section 952(c)(2). Although such amount would not be recaptured as subpart F income, the comment recommended that, in order to avoid double taxation of the same earnings, any recapture account should nonetheless be reduced by the amount treated as gross tested income. The Treasury Department and the IRS have determined that this recommendation is inconsistent with the language and purpose of section 952(c)(2). Section 952(c)(2) requires recapture in any taxable year in which E&P exceed subpart F income, and the recommendation would not result in recapture in these circumstances. Further, the purpose of section 952(c)(2) is to postpone the inclusion of subpart F income to a subsequent taxable year in which the CFC has sufficient E&P. The recommendation, by reducing a recapture account without recapture of subpart F income, would result in the permanent exemption of subpart F income. Finally, as illustrated in this part IV.C of the Summary of Comments and Explanation of Revisions section, the simultaneous recapture of subpart F income and the inclusion of gross tested income does not amount to double taxation of a single item of income, but rather the single taxation of each of two items of income. Accordingly, this recommendation is not adopted.

A comment recommended as another alternative that the section 952(c)(2) coordination rule not be applied with respect to recapture accounts that existed before the Act. The comment asserted that it would be inappropriate for income that triggers recapture under section 952(c)(2) based on pre-Act recapture account balances to also be treated as gross tested income because section 951A did not exist before 2018 and therefore no tested losses could have reduced subpart F income. The final regulations do not adopt this recommendation. Nothing in the statute or legislative history suggests that pre-Act recapture account balances should be treated differently than post-Act account balances. Further, there appears to be no stronger policy rationale for permitting losses that arose before the Act to permanently exempt gross tested income from taxation than for permitting GILTI-exempt losses that arise after the Act to do the same.

While the comments with respect to the section 952(c) coordination rule generally pertained to the application of the E&P limitation in section 952(c)(1)(A), the same issues as discussed in respect to section 952(c)(1)(A) arise with respect to application of the qualified deficit rule in section 952(c)(1)(B) and the chain deficit rule in section 952(c)(1)(C). Accordingly, the final regulations revise the section 952(c) coordination rule to apply also to disregard the effect of a qualified deficit or a chain deficit in determining gross tested income. See § 1.951A–2(c)(4)(ii).

One comment requested clarification that income subject to the high tax exception of section 954(b)(4) is not included in gross tested income even if such income would also be excluded from subpart F income by reason of section 952(c)(1)(A). The comment provided an example in which a CFC has $100x of foreign base company services income, a $100x loss in another category of subpart F income, no E&P, and thus no subpart F income by reason of the E&P limitation of section 952(c)(1)(A). According to the comment, if the election under section 954(b)(4) is made with respect to the foreign base company services income, one interpretation of the proposed regulations is that the $100x of foreign base company services income is not excluded from gross tested income by either the subpart F exclusion under section 951A(c)(2)(A)(i)(II) (because such income is not included in subpart F by reason of the high tax exception of section 954(b)(4)) or the GILTI high tax exclusion under section 951A(c)(2)(A)(i)(III) (because such income is not excluded from subpart F income ''solely'' by reason of the high tax exception of section 954(b)(4)). The Treasury Department and the IRS have determined that such clarification is unnecessary because an election under section 954(b)(4) cannot be made with respect to a net item eliminated by reason of section 952(c)(1)(A). Section 1.954–1(d)(4)(ii) provides that the net item of income to which the high tax exception of section 954(b)(4) applies is the subpart F income of a CFC determined after taking into account the earnings and profits limitation of section 952(c)(1)(A). Therefore, the net item of income that can be excluded under the high tax exception is determined after the application of section 952(c)(1)(A). Indeed, in the example presented by the comment, because the subpart F income of the CFC after application of the E&P limitation is zero, there is no net item of income for which an election under section 954(b)(4) and § 1.954–1(d)(5) can be made. Accordingly, the $100x of foreign base company services income is excluded from gross tested income solely by reason of the subpart F exclusion under section 951A(c)(2)(A)(i)(II).

b. Coordination With Qualified Deficit Rule in Section 952(c)(1)(B)

The qualified deficit rule in section 952(c)(1)(B) reduces a U.S. shareholder's subpart F inclusion attributable to a qualified activity (defined in section 952(c)(1)(B)(iii)) to the extent of that shareholder's pro rata share of any qualified deficit (defined in section 952(c)(1)(B)(ii)). A comment suggested that a tested loss could, in some cases, also give rise to a qualified deficit that could reduce subpart F income in a subsequent taxable year. The comment asserted that this could occur, for example, if certain deductions and losses that make up a qualified deficit are also properly allocable to gross tested income. Accordingly, the comment recommended that the final regulations deny a U.S. shareholder the ability to both reduce its net CFC tested income and increase a qualified deficit by reason of the same economic loss.

The Treasury Department and the IRS agree that the same deduction or loss should not result in a double benefit under section 951A and the qualified deficit rule, but have not identified a situation in which a single deduction or loss can both reduce tested income (or increase tested loss) and also give rise to or increase a qualified deficit. A deduction or loss that is properly allocable to gross tested income cannot also be attributable to a qualified activity that gives rise to subpart F income, and the same deduction cannot be taken into account more than once under sections 954(b)(5) and 951A(c)(2)(A)(ii). Nevertheless, for the avoidance of doubt, the final regulations provide that deductions that are allocated and apportioned to gross tested income are not attributable to a qualified activity and thus do not also increase or give rise to a qualified deficit. See § 1.951A–2(c)(3).

c. Coordination With Section 952(c)(1)(B)(vii)

Section 952(c)(1)(B)(vii)(I) contains an election to apply section 953(a) without regard to the same country exception in section 953(a)(1)(A). Comments requested that the section 952(c) coordination rule be modified to clarify that gross tested income is determined after giving effect to the election in section 952(c)(1)(B)(vii)(I). The rule in proposed § 1.951A–2(c)(4) was not intended to address the election in section 952(c)(1)(B)(vii)(I). Accordingly, the final regulations modify the section 952(c) coordination rule to apply only with respect to the E&P limitation rules of section 952(c)(1) (including the qualified deficit and chain deficit rules) and the E&P recapture rule of section 952(c)(2).

3. Coordination With De Minimis Rule, Full Inclusion Rule, and High Tax Exception

Section 954(a) provides that FBCI for a taxable year is equal to the sum of foreign personal holding company income (as determined under section 954(c)) (''FPHCI''), foreign base company sales income (as determined under section 954(d)) and foreign base company services income (as determined under section 954(e)). However, section 954(b)(3)(A) provides that if the sum of FBCI (determined without regard to allocable deductions) (''gross FBCI'') and gross insurance income for the taxable year is less than the lesser of five percent of gross income or $1,000,000, then no part of the gross income for the taxable year is treated as FBCI or insurance income (the ''de minimis rule''). Conversely, section 954(b)(3)(B) provides that if the sum of gross FBCI and gross insurance income for the taxable year exceeds 70 percent of gross income, the entire gross income for the taxable year is treated as gross FBCI or gross insurance income, as appropriate (the ''full inclusion rule'').

One comment requested that the de minimis and full inclusion rules be taken into account for purposes of determining ''gross income taken into account'' in determining subpart F income within the meaning of the subpart F exclusion. The comment asserted that such a rule would prevent double taxation because full inclusion subpart F income would be taxed solely under section 951 (and not section 951A), whereas de minimis subpart F income would be taxed solely under section 951A (and not section 951).

The Treasury Department and the IRS agree with this comment. Accordingly, subject to the application of the section 952(c) coordination rule, discussed in part IV.C.2 of this Summary of Comments and Explanation of Revisions section, the final regulations provide that the subpart F exclusion applies to gross income included in FBCI (adjusted net FBCI as defined in § 1.954–1(a)(5)) or insurance income (adjusted net insurance income as defined in § 1.954–1(a)(6)). See § 1.951A–2(c)(4)(i). Thus, for purposes of the subpart F exclusion, gross income taken into account in determining subpart F income does not include any item of gross income excluded from FBCI or insurance income under the de minimis rule or the high tax exception of section 954(b)(4), but generally does include any item of gross income included in FBCI or insurance income under the full inclusion rule. In addition, for purposes of the subpart F exclusion, gross income taken into account in determining subpart F income does not include gross income that qualifies for an exception to a category of FBCI described in section 954(a), including amounts excepted from the definition of FPHCI, such as rents and royalties derived from an active business under section 954(c)(2)(A) and § 1.954–2(b)(5) and (6) or active financing income under section 954(h).

Section 1.954–1(d)(6) provides that an item of gross income that is included in FBCI or insurance income under the full inclusion rule (''full inclusion FBCI'') is excluded from subpart F income if more than 90 percent of the gross FBCI and gross insurance income for the taxable year (determined without regard to the full inclusion rule) is attributable to net amounts excluded from subpart F income under the high tax exception of section 954(b)(4). The Treasury Department and the IRS have determined that it would be inappropriate for an item of gross income that would be included in gross tested income but for the full inclusion rule to be excluded from both gross tested income (by reason of the subpart F exclusion) and subpart F income (by reason of § 1.954–1(d)(6)). Accordingly, the final regulations provide that full inclusion FBCI excluded from subpart F income by reason of § 1.954–1(d)(6) is not excluded from gross tested income by reason of the subpart F exclusion. See § 1.951A–2(c)(4)(iii)(C). The final regulations further clarify that income excluded from subpart F income under § 1.954–1(d)(6) is also not excluded from gross tested income by reason of the GILTI high tax exclusion (discussed in part IV.B of this Summary of Comments and Explanation of Revisions section). See id. Accordingly, income excluded from subpart F income by reason of § 1.954–1(d)(6) is included in gross tested income.

D. Effect of Basis Adjustments Under Section 961(c)

Section 961(c) provides that, under regulations prescribed by the Secretary, if a U.S. shareholder is treated under section 958(a)(2) as owning stock of a CFC which is owned by another CFC, then adjustments similar to those provided under section 961(a) and (b) are made to the basis in such stock, and the basis in stock of any other CFC by reason of which the U.S. shareholder is considered under section 958(a)(2) as owning the stock. The provision further provides, however, that these adjustments are made only for the purposes of determining the amount included under section 951 in the gross income of such U.S. shareholder (or any successor U.S. shareholder). There are no regulations in effect under section 961(c).

Comments have questioned whether basis adjustments under section 961(c) should be taken into account for purposes of determining gross tested income of a CFC upon the CFC's disposition of stock of another CFC. One comment noted that, while section 951A(f)(1)(A) treats a GILTI inclusion in the same manner as a subpart F inclusion for purposes of basis adjustments under section 961, the resulting basis under section 961(c) only applies for purposes of determining amounts included in gross income under section 951. The comment recommended nonetheless that regulations provide that section 961(c) basis adjustments apply both for purposes of determining subpart F income and gross tested income to prevent certain items of income from being inappropriately taxed twice; the comment further noted, however, that unintentional non-taxation should also be avoided.

The interaction of basis adjustments under section 961(c) and section 951A will be further considered in connection with a guidance project addressing previously taxed E&P (''PTEP'') under sections 959 and 961. *See* Notice 2019–1, 2019–2 I.R.B. 275, section 3 (announcing an intention to address PTEP in forthcoming proposed regulations). The Treasury Department and the IRS are sensitive to the concern expressed in the comment but are also aware that taking into account section 961(c) basis adjustments for purposes of determining gross tested income could inappropriately reduce the amount of stock gain subject to tax. This may occur because, as was the case before the Act, section 961(c) adjustments are not taken into account for purposes of determining E&P, and thus a disposition of lower-tier CFC stock may generate E&P for the upper-tier CFC to the extent of the amount of the gain in the stock determined without regard to section 961(c). If the resulting E&P give rise to a dividend (including by reason of a disposition under section 1248) to a corporate U.S. shareholder, the dividend may result in an offsetting dividends received deduction. See sections 245A(a) and 1248(j). If section 245A(a) applies to the dividend, the taxable portion of any unrealized appreciation in the upper-tier CFC stock, to the extent attributable to unrealized appreciation in assets of the upper-tier CFC, would effectively be reduced in an amount equal to the dividend, either because of a dividend distribution that reduces the value in the upper-tier CFC stock without a corresponding basis reduction (section 961(d) applies only to the extent loss would otherwise be recognized) or by reason of a disposition to the extent the gain is recharacterized under section 1248(j) as a dividend for purposes of applying section 245A. Comments are requested on this issue, including the extent to which adjustments should be made to minimize the potential for the same item of income being subject to tax more than once and to minimize the inappropriate reduction of gain in CFC stock held by corporate U.S. shareholders.

E. Deduction or Loss Attributable to Disqualified Basis

1. In General

The proposed regulations include a rule that generally disallows, for purposes of calculating tested income or tested loss, any deduction or loss attributable to disqualified basis in depreciable or amortizable property (including, for example, intangible property) resulting from a disqualified transfer of the property. See proposed § 1.951A–2(c)(5). The relevant terms for purposes of applying the rule in proposed § 1.951A–2(c)(5) are defined by reference to certain provisions and terms in proposed § 1.951A–3(h)(2) (disregarding disqualified basis for purposes of determining QBAI), with certain modifications. See proposed § 1.951A–2(c)(5)(iii). In general, the term ''disqualified basis'' is defined as the excess of a property's adjusted basis immediately after a disqualified transfer, over the sum of the property's adjusted basis immediately before the disqualified transfer and the amount of gain recognized by the transferor in the disqualified transfer that is subject to tax as subpart F income or effectively connected income. See proposed § 1.951A–3(h)(2)(ii)(A) and (B). The term ''disqualified transfer'' is defined as a transfer of property by a transferor CFC during the transferor CFC's disqualified period to a related person in which gain was recognized, in whole or in part. See proposed § 1.951A–3(h)(2)(ii)(C). Finally, the term ''disqualified period'' is defined with respect to a transferor CFC as the period that begins on January 1, 2018, and ends as of the close of the transferor CFC's last taxable year that is not a CFC inclusion year. See proposed § 1.951A–3(h)(2)(ii)(D). Income generated by fiscal-year CFCs during the disqualified period is subject to neither the transition tax under section 965 nor the tax on GILTI under section 951A.

In response to comments, the Treasury Department and the IRS have revised these rules in a manner consistent with the purpose of the rule in the proposed regulations, as discussed in this part IV.E of the Summary of Comments and Explanation of Revisions section. Certain comments and revisions related to the determination of disqualified basis for purposes of both proposed §§ 1.951A–2(c)(5) and 1.951A–3(h)(2) are discussed in part IV.E.3 and 4 of this Summary of Comments and Explanation of Revisions section. For a discussion of additional comments and revisions related to the determination of disqualified basis for purposes of both proposed §§ 1.951A–2(c)(5) and 1.951A–3(h)(2), see part V.G of this Summary of Comments and Explanation of Revisions section.

2. Authority

Several comments recommended that the rule in proposed § 1.951A–2(c)(5) be withdrawn or substantially narrowed and re-proposed. Some of these comments recommended that the rule be revised to apply only to ''non-economic'' transactions or transactions engaged in with a tax-avoidance purpose, or that avoidance-type transactions be addressed through existing statutory or judicial doctrines. One comment recommended that the rule continue to be limited to transfers between related persons because third-party sales are fundamentally different from the ''non-economic transactions'' described in the legislative history. However, one comment opposed any additional limitations or weakening of the anti-abuse rules in the proposed regulations.

Several comments questioned the Treasury Department and the IRS's authority for issuing the rule. Many of these comments asserted that section 951A(d)(4), which provides authority to issue regulations that are ''appropriate to prevent the avoidance of the purposes of this subsection,'' does not authorize the Treasury Department and the IRS to promulgate rules that apply for any purpose other than for purposes of determining QBAI under section 951A(d). Also, two comments stated that the disallowance of deductions under proposed § 1.951A–2(c)(5) is contrary to, and therefore not authorized by, section 951A(c)(2)(A)(ii), which requires that the deductions of the CFC be allocated to gross tested income under rules similar to the rules of section 954(b)(5) for purposes of calculating tested income or tested loss.

In response to these comments, the Treasury Department and the IRS have revised the proposed rule in a manner that better reflects the source of its authority. Section 7805(a) provides that ''the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.'' Section 951A(c)(2)(A) defines ''tested income'' by reference to certain items of gross income, reduced by ''the deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5) (or to which such deductions would be allocable if there were such gross income).'' Section 954(b)(5) provides that FPHCI, foreign base company sales income, and foreign base company services income are reduced, ''under regulations prescribed by the Secretary,'' by deductions ''properly allocable'' to such income. Similarly, section 882(c)(1)(A) provides that, for purposes of determining a foreign corporation's income which is effectively connected with the conduct of a trade or business within the United States (''effectively connected income''), ''proper apportionment and allocation'' of deductions of the foreign corporation ''shall be determined as provided in regulations prescribed by the Secretary.'' The rule, as revised in the final regulations, provides guidance for determining whether certain deductions or losses are ''properly allocable'' to gross tested income, subpart F income, or effectively connected income within the meaning of section 951A(c)(2)(A), section 954(b)(5), or section 882(c)(1)(A), respectively. See, for example, *Redlark* v. *Commissioner,* 141 F.3d 936, 940–41 (9th Cir. 1998) and *Miller* v. *United States,* 65 F.3d 687, 690 (8th Cir. 1995) (determining that the term ''properly allocable'' in section 163(e) is ambiguous and therefore there is an implicit legislative delegation of authority to the Commissioner to define the term).

The legislative history to the Act indicates that section 965 was intended as a transition measure to the new territorial tax system in which section 951A applies, and that Congress intended that all earnings of a CFC would be potentially subject to tax under either section 965 or section 951A. Conference Report, at 613 (''The [transition tax applies in] the last taxable year of a deferred foreign income corporation that begins before January 1, 2018, which is that foreign corporation's last taxable year before the transition to the new corporate tax regime elsewhere in the bill goes into effect.''). Because the final date for measuring the E&P of a CFC for purposes of section 965 is December 31, 2017 (the ''final E&P measurement date''), and the effective date of section 951A is the first taxable year of a CFC beginning after December 31, 2017, all the earnings of a calendar year CFC are potentially subject to taxation under either section 965 or section 951A. However, a fiscal year CFC (for example, a CFC with a taxable year ending November 30) may have a gap between its final E&P measurement date under section 965 (December 31, 2017) and the date on which section 951A first applies with respect to its income (December 1, 2018, for a CFC with a taxable year ending November 30). Congress was aware that taxpayers could take advantage of this period to create ''cost-free'' basis in assets that could be used to reduce their U.S. tax liability in subsequent years, and expected the Treasury Department and the IRS to issue regulations to prevent this result. See Conference Report, at 645 (''The conferees intend that non-economic transactions intended to affect tax attributes of CFCs and their U.S. shareholders (including amounts of tested income and tested loss, tested foreign income taxes, net deemed tangible income return, and QBAI) to minimize tax under this provision be disregarded. For example, the conferees expect the Secretary to prescribe regulations to address transactions that occur after the measurement date of post-1986 earnings and profits under amended section 965, but before the first taxable year for which new section 951A applies, if such transactions are undertaken to increase a CFC's QBAI.'').

Consistent with the statute and the legislative history, the Treasury Department and the IRS have determined that a deduction or loss attributable to basis (disqualified basis) created by reason of a transfer from a CFC to a related CFC (a disqualified transfer) during the period between the final E&P measurement date and the effective date of section 951A (the disqualified period), to the extent no taxpayer included an amount in gross income by reason of such disqualified transfer, should not be permitted to reduce a taxpayer's U.S. income tax liability in subsequent years. Accordingly, the final regulations treat any deduction or loss attributable to disqualified basis as not ''properly allocable'' to gross tested income, subpart F income, or effectively connected income of the CFC (''residual CFC gross income''). See § 1.951A–2(c)(5)(i).

While the rules that allocate and apportion expenses generally depend on the factual relationship between the item of expense and the associated gross income, the relevant statutory language in sections 882(c)(1)(A), 951A(c)(2)(A)(ii), and 954(b)(5) does not constrain the Secretary from taking into account other considerations in determining whether it is ''proper'' for a certain item of expense to be allocated to, and therefore reduce, a particular item of gross income. Indeed, the Treasury Department and the IRS are not required to issue rules that mechanically allocate an item of expense to gross income to which such expense factually relates if taxable income would be distorted by reason of such allocation. In this regard, the Treasury Department and the IRS have determined that the rule in § 1.951A–2(c)(5) is necessary to ensure that transactions during the disqualified period, the income or earnings from which are not subject to tax, are not permitted to improperly reduce or eliminate a taxpayer's income that would be subject to tax after the disqualified period. This rule creates symmetry between the category of income generated by reason of a transfer during the disqualified period and the category of income to which any deduction or loss attributable to the resulting basis is allocated. That is, a disqualified transfer, by definition, generates residual CFC gross income (income that is not subpart F income, tested income, or effectively connected income), and the rule in § 1.951A–2(c)(5) allocates the deduction or loss attributable to the disqualified basis to the same category of income. In the case of a depreciable or amortizable asset with disqualified basis that is held until the end of its useful life, the aggregate amount of deduction or loss attributable to the disqualified basis allocated to residual CFC gross income under the rule will equal the amount of residual CFC gross income generated in the disqualified transfer.

The rule in proposed § 1.951A–2(c)(5) provides that any deduction or loss attributable to disqualified basis is disregarded for purposes of determining tested income or tested loss. In contrast, the rule in the final regulations allocates and apportions any such deduction or loss to gross income other than gross tested income, subpart F income, or effectively connected income. With respect to the determination of tested income or tested loss, whether an item of deduction or loss is disregarded (under the proposed regulations) or allocated to income other than gross tested income (under the final regulations) does not provide a different result. In either case, the deduction or loss is not permitted to reduce tested income or increase tested loss. However, by allocating an item of deduction or loss to residual CFC gross income, the rule in the final regulations ensures that any deduction or loss attributable to disqualified basis is also not taken into account for purposes of determining the CFC's subpart F income or effectively connected income. The broadening of the rule to allocate any deduction or loss attributable to disqualified basis away from subpart F income and effectively connected income is intended to ensure that taxpayers cannot simply circumvent the rule by converting their gross tested income into either subpart F income or effectively connected income, and thus be permitted to use the deduction or loss attributable to the disqualified basis against such income. The preamble to the proposed regulations evidenced an intention that taxpayers not be permitted to claim tax benefits with respect to cost-free disqualified basis, and the rule in the final regulations effectuates this intent by closing an obvious loophole. Furthermore, the rule ensures that the words ''properly allocable'' are interpreted consistently across provisions—sections 882(c)(1)(A), 951A(c)(2)(A)(ii), and 954(b)(5)—with respect to any deduction or loss attributable to disqualified basis.

The rule in proposed § 1.951A–2(c)(5) applies only to deductions or losses attributable to disqualified basis in ''specified property,'' which is defined as property that is of a type with respect to which a deduction is allowable under section 167 or 197. See proposed § 1.951A–2(c)(5)(ii). The Treasury Department and the IRS have concluded, however, that the rule should not be limited to specified property because deductions or losses attributable to disqualified basis in other property may also be used to inappropriately reduce a taxpayer's U.S. income tax liability. On the other hand, the Treasury Department and the IRS have concluded that it would be unduly burdensome to require CFCs to determine the disqualified basis in each item of inventory and that it is reasonable to expect that most inventory acquired during the disqualified period will be sold at a gain such that the disqualified basis in an item of inventory would rarely be relevant. Accordingly, the rule in the final regulations applies to deductions or losses attributable to disqualified basis in any property, other than property described in section 1221(a)(1), regardless of whether the property is of a type with respect to which a deduction is allowable under section 167 or 197. See §§ 1.951A–2(c)(5)(iii)(A) and 1.951A–3(h)(2)(ii).

One comment asserted that the use of the phrase ''non-economic transactions'' in the Conference Report means that the authority to draft anti-abuse rules pursuant to sections 7805 and 951A(d)(4) is limited to non-economic transactions, which necessitates a facts and circumstances test. The rule in § 1.951A–2(c)(5) is not premised upon facts and circumstances, such as a taxpayer's intent; rather, the rule is based on an interpretation of the term ''properly allocable'' in the context of a deduction or loss attributable to disqualified basis. Moreover, the rule applies only to a narrow subset of transactions—that is, transfers by fiscal year CFCs to related parties that occur between the final E&P measurement date under section 965 and the effective date of section 951A—and only has the effect of allocating a deduction or loss attributable to the cost-free basis created in such transaction to residual CFC gross income. The Treasury Department and the IRS have concluded that these narrowly circumscribed transactions will in almost all cases be motivated by tax avoidance rather than business exigencies, and that the allocation and apportionment of deduction or loss to residual CFC gross income is an appropriately tailored measure to address these transactions.

Based on the foregoing, the Treasury Department and the IRS have concluded that the rule in § 1.951A–2(c)(5), with the modifications discussed in this part IV.E of the Summary of Comments and Explanation of Revisions section, represents an appropriate exercise of its authority under sections 951A and 7805.

3. Effect of Disqualified Basis for Purposes of Determining Income or Gain

Some comments noted that the rule in proposed § 1.951A–2(c)(5) addresses only deductions or losses attributable to disqualified basis and does not address the effect of disqualified basis in determining a CFC's income or gain upon the disposition of property. For example, assume USP, a domestic corporation, wholly owns CFC1, which holds property with a fair market value of $100x and an adjusted basis of $80x, $70x of which is disqualified basis. CFC1 sells the property to an unrelated party in exchange for $100x of cash and, without regard to proposed § 1.951A–2(c)(5), recognizes $20x of gain. The comments asked whether, under the rule, the disqualified basis of $70x in the property is disregarded such that the sale results in $90x (rather than $20x) of gross tested income to CFC1.

The Treasury Department and the IRS have determined that the rule in § 1.951A–2(c)(5) should apply only for purposes of determining whether a deduction or loss is properly allocable to gross tested income, subpart F income, or effectively connected income. Thus, disqualified basis is not disregarded for purposes of determining income or gain recognized on the disposition of the property. However, because many taxpayers capitalize depreciation or amortization expense to other property, including inventory, and recover those costs through cost of goods sold or depreciation of the other property, the final regulations also provide that any depreciation, amortization, or cost recovery allowances attributable to disqualified basis is not properly allocable to property produced or acquired for resale under section 263, 263A, or 471. See § 1.951A–2(c)(5)(i). This rule ensures that depreciation or amortization expenses attributable to disqualified basis are not permitted to indirectly reduce taxable income through the depreciation expense of other property or from the disposition of inventory.

As discussed in part V.G of this Summary of Comments and Explanation of Revisions section, disqualified basis is generally reduced or eliminated to the extent that such basis reduces taxable income. Therefore, a sale of property with disqualified basis generally results in the elimination of the disqualified basis, because the basis is taken into account in determining the CFC's taxable income. As a result, absent a special provision, a CFC could ''cleanse'' the disqualified basis in property by selling the property to a related person after the disqualified period; the related person would have no disqualified basis in the property, and the selling CFC would recognize income only to the extent the amount realized exceeded its adjusted basis in the property (for this purpose, including its disqualified basis). To address this obvious loophole, the final regulations provide that, except to the extent that any loss recognized on the transfer of such property is treated as attributable to disqualified basis under § 1.951A–2(c)(5), or the basis is reduced or eliminated in a nonrecognition transaction within the meaning of section 7701(a)(45), a transfer of property with disqualified basis in the hands of a CFC to a related person does not reduce the disqualified basis in the hands of the transferee. See § 1.951A–3(h)(2)(ii)(B)(*1*)(*ii*). Thus, for example, if a CFC sells property with an adjusted basis of $80x and disqualified basis of $70x to a related person for $100x in a fully taxable exchange, the selling CFC would recognize $20x of gross income on the sale, which income may be included in gross tested income, and the disqualified basis in the property immediately after the transfer would remain $70x in the hands of the related person.

4. Concurrent Application of the Rule With Other Provisions

One comment asserted that if the Treasury Department and the IRS retain the rule in proposed § 1.951A–2(c)(5), then the disqualified transfer should be disregarded for all U.S. tax purposes, including for purposes of determining the gain or loss recognized by the transferor CFC by reason of the transfer and the tax attributes of the transferor CFC created by reason of the transfer. The comment expressed concern with potentially adverse consequences to the transferor CFC from the concurrent application of the rule and certain other provisions, such as incremental subpart F income generated by reason of the transfer, additional E&P that could dilute foreign tax credits with respect to a subpart F inclusion, and immediate U.S. taxation on any effectively connected income under section 882 from the transfer.

As discussed in part IV.E.2 of this Summary of Comments and Explanation of Revisions section, the rule in § 1.951A–2(c)(5) is intended to provide guidance on determining whether deductions of a CFC attributable to disqualified basis are properly allocable to gross tested income, subpart F income, and effectively connected income. The rule is not intended to disregard the transfer that created the disqualified basis in its entirety. Moreover, the Treasury Department and the IRS have determined that disregarding the transfer for all U.S. tax purposes is not appropriate because the property has in fact been transferred. In addition, disqualified basis in property does not include basis resulting from ''qualified gain,'' which is gain from the transfer included by the transferor CFC as effectively connected income or by a U.S. shareholder as its pro rata share of subpart F income. See § 1.951A–3(h)(2)(ii)(C)(*3*). Thus, the rule in § 1.951A–2(c)(5) does not apply to basis created in connection with amounts that are taxed under sections 882 and 951. Accordingly, this recommendation is not adopted.

Section 901(m) disallows certain foreign tax credits on foreign income not taken into account for U.S. tax purposes as a result of a ''covered asset acquisition,'' which includes an acquisition of assets for U.S. tax purposes that is treated as the acquisition of stock of a corporation (or is disregarded) for foreign tax purposes and an acquisition of an interest in a partnership which has an election in effect under section 754. See section 901(m)(2)(B) and (C). One comment noted that a disqualified transfer subject to the rule in proposed § 1.951A–2(c)(5) could also constitute a covered asset acquisition under section 901(m), such as the sale of an interest in a disregarded entity during the disqualified period. In such a case, according to the comment, a deduction or loss that is not taken into account for purposes of determining tested income or tested loss under the rule may nevertheless be taken into account for purposes of section 901(m) such that foreign tax credits under section 960 might be disallowed. The comment asserted that the concurrent application of the rule and section 901(m) could be unduly punitive to taxpayers that engaged in disqualified transfers that were also covered asset acquisitions and therefore recommended that a deduction or loss attributable to disqualified basis also be disregarded for purposes of section 901(m).

Disqualified basis could give rise to policy concerns under section 901(m) even when a deduction attributable to the disqualified basis is not taken into account in determining tested income or tested loss (or subpart F income or effectively connected income). For example, a deduction or loss attributable to the disqualified basis can reduce E&P for a taxable year, with the result that subpart F income for the taxable year may be limited under section 952(c)(1)(A). Indeed, proposed § 1.901(m)–5(b)(1) provides that basis differences must be taken into account under section 901(m) regardless of whether the deduction is deferred or disallowed for U.S. income tax purposes.

Based on the foregoing, the Treasury Department and the IRS have determined that it is not appropriate to disregard disqualified basis for purposes of section 901(m). However, in response to this comment, the final regulations permit taxpayers to make an election pursuant to which the adjusted basis in each property with disqualified basis held by a CFC or a partnership is reduced by the amount of the disqualified basis and the disqualified basis is eliminated. See § 1.951A–3(h)(2)(ii)(B)(*3*). This reduction in adjusted basis is for all purposes of the Code, including section 901(m). Thus, if an election is made, a disqualified transfer of property that is also a covered asset acquisition of a relevant foreign asset will result in neither disqualified basis in the property within the meaning of § 1.951A–3(h)(2)(ii) nor a basis difference with respect to the relevant foreign asset within the meaning of section 901(m)(3)(C). As a result, in the case of an election, the rule in § 1.951A–2(c)(5) and section 901(m) will not apply concurrently with respect to a disqualified transfer that is also a covered asset acquisition.

F. Other Comments and Revisions

1. Tested Loss Carryforward

In determining a U.S. shareholder's net CFC tested income for a taxable year, the U.S. shareholder's aggregate pro rata share of tested losses for the taxable year reduces the shareholder's aggregate pro rata share of tested income for the taxable year. See section 951A(c)(1). Comments recommended that the final regulations include a provision allowing a U.S. shareholder's aggregate pro rata share of tested losses in excess of the shareholder's aggregate pro rata share of tested income for the taxable year to be carried forward to offset the shareholder's net CFC tested income in subsequent years.

A GILTI inclusion amount is an annual calculation, and nothing in the statute or legislative history suggests that unused items, such as a U.S. shareholder's aggregate pro rata share of tested losses in excess of the shareholder's aggregate pro rata share of tested income for the taxable year, can or should be carried to another taxable year. Accordingly, this recommendation is not adopted.

2. Deemed Payments Under Section 367(d)

In general, section 367(d) provides that if a U.S. person transfers intangible property to a foreign corporation in an exchange described in section 351 or 361, the person is treated as having sold the property in exchange for payments contingent upon the productivity, use, or disposition of such property. The regulations under section 367(d) provide that the deemed payment may be treated as an expense (whether or not that amount is actually paid) of the transferee foreign corporation that is properly allocated and apportioned to gross income subject to subpart F under the provisions of §§ 1.954–1(c) and 1.861–8. See § 1.367(d)–1T(c)(2)(ii) and (e)(2)(ii).

In response to comments, the final regulations clarify that a deemed payment under section 367(d) is treated as an allowable deduction for purposes of determining tested income and tested loss. See § 1.951A–2(c)(2)(ii). Accordingly, consistent with the regulations under section 367(d), such deemed payments may be allocated and apportioned to gross tested income to the extent provided under § 1.951A–2(c)(3).

3. Compute Tested Income in the Same Manner as E&P

A comment requested that the final regulations provide that tested income and tested loss be determined under the principles of section 964, which provides rules for the calculation of E&P of foreign corporations. Another comment requested that the final regulations permit small CFCs to make an annual election to treat their tested income or tested loss for a CFC inclusion year to be equal to their E&P for such CFC inclusion year. Section 951A(c)(2) is clear that tested income or tested loss for a CFC inclusion year is computed by subtracting properly allocable deductions from gross tested income, and there is nothing in the statute or legislative history that indicates that tested income or tested loss should be limited by, or otherwise determined by reference to, E&P for such year. Accordingly, these recommendations are not adopted.

4. Effect of Losses in Other Categories of Income

The proposed regulations provide that allowable deductions are allocated and apportioned to gross tested income under the principles of section 954(b)(5) and § 1.954–1(c), by treating gross tested income within a single category (as defined in § 1.904–5(a)) as a single item of gross income, in addition to the items in § 1.954–1(c)(1)(iii). See proposed § 1.951A–2(c)(3). The final regulations clarify that losses in other categories of income (such as FBCI) cannot reduce gross tested income, and that tested losses cannot reduce other categories of income. See § 1.951A–2(c)(3).

V. Comments and Revisions to Proposed § 1.951A–3—Qualified Business Asset Investment

A. Inability of Tested Loss CFCs To Have QBAI

A U.S. shareholder's GILTI inclusion amount is equal to the excess of its net CFC tested income over its net DTIR for the taxable year. See section 951A(b)(1) and § 1.951A–1(c)(1). A U.S. shareholder's net DTIR is equal to 10 percent of its aggregate pro rata share of the QBAI of its CFCs. See section 951A(b)(2) and § 1.951A–1(c)(3). A CFC's QBAI is equal to its aggregate average adjusted basis in specified tangible property. See section 951A(1) and proposed § 1.951A–3(b). Specified tangible property is defined as tangible property used in the production of tested income. See section 951A(d)(2)(A) and proposed § 1.951A–3(c)(1). Consistent with the statute and the Conference Report, the proposed regulations clarify that tangible property of a tested loss CFC is not used in the production of tested income within the meaning of section 951A(d)(2)(A). See Conference Report, at 642, fn. 1536. In this regard, the proposed regulations provide that tangible property of a tested loss CFC is not specified tangible property and thus a tested loss CFC's QBAI is zero (the ''tested loss QBAI exclusion''). See proposed § 1.951A–3(b), (c)(1), and (g)(1).

Comments recommended that the final regulations eliminate the tested loss QBAI exclusion, such that a tested loss CFC could have specified tangible property and therefore QBAI. One of the comments noted that the version of section 951A in the House bill defined specified tangible property as any tangible property to the extent such property is used in the production of tested income or tested loss. See H.R. 1, 115th Cong. § 4301(a) (2017). The comment posited that the text of the statute is ambiguous, the tested loss QBAI exclusion is otherwise inconsistent with section 951A, and the exclusion is not compelled by the statute. The comment also asserted that this rule may be easily avoided by combining a tested loss CFC with a tested income CFC (including through an election under § 301.7701–3 to change the classification of either entity for U.S. tax purposes) because there is no corollary to the tested loss QBAI exclusion for partnerships or disregarded entities.

The Treasury Department and the IRS reject this recommendation. The Senate amendment to the House bill struck the reference to ''tested loss'' in the definition of specified tangible property, and the Conference Report explains that the term ''used in the production of tested income'' means that ''[s]pecified tangible property does not include property used in the production of a tested loss, so that a CFC that has a tested loss in a taxable year does not have QBAI for the taxable year.'' See Conference Report, at 642, fn.1536. Thus, the statute, taking into account the footnote in the Conference Report, unambiguously provides that tested loss CFCs cannot have QBAI. Accordingly, the final regulations retain the tested loss QBAI exclusion. But cf. part VI.D of this Summary of Comments and Explanation of Revisions section regarding a reduction to tested interest expense of a CFC for a ''tested loss QBAI amount,'' a new component in computing specified interest expense.

One comment requested that, if the tested loss QBAI exclusion is retained, proposed § 1.951A–3(b) and (c) should be revised to clarify that the exclusion applies only for a CFC inclusion year with respect to which a CFC is a tested loss CFC. The final regulations do not revise these provisions because it is sufficiently clear that the tested loss QBAI exclusion rule applies only with respect to a CFC inclusion year of a CFC for which it is a tested loss CFC and that a CFC is a tested loss CFC only for a CFC inclusion year in which the CFC does not have tested income. See § 1.951A–2(b)(2).

B. Determination of Depreciable Property

Section 951A(d)(1)(B) provides that specified tangible property is taken into account in determining QBAI only if the property is of a type with respect to which a depreciation deduction is allowable under section 167. Similarly, the proposed regulations define ''specified tangible property'' as tangible property used in the production of tested income, and define ''tangible property'' as property for which the depreciation deduction provided by section 167(a) is eligible to be determined under section 168 (even if the CFC has elected not to apply section 168). See proposed § 1.951A–3(c)(1) and (2).

A comment recommended that, for purposes of determining QBAI, the final regulations take into account the entire adjusted basis in precious metals and other similar tangible property that are used in the production of tested income, even if only a portion of the adjusted basis in such property is depreciable in calculating regular taxable income. The comment suggested that if property is depreciable in part, then the entire asset is ''of a type'' with respect to which a deduction is allowable under section 167 within the meaning of section 951A(d)(1)(B).

In defining QBAI, section 951A(d) distinguishes between depreciable tangible property and non-depreciable tangible property, such as land. Section 951A(d) defines QBAI as specified tangible property ''of a type'' for which a deduction is allowable under section 167. The proposed and final regulations interpret the phrase ''of a type'' consistent with the interpretation of the phrase ''of a character'' with respect to section 168. See Rev. Rul. 2015–11, 2015–21 I.R.B. 975. See § 1.951A–3(c)(2) (defining tangible property as property for which the depreciation deduction provided by section 167(a) is eligible to be determined under section 168 (with certain exclusions)). The Treasury Department and the IRS determined that for consistency, the same standard for determining whether property is depreciable should apply for determining whether property qualifies as QBAI.

In *Newark Morning Ledger Co.* v. *United States,* 507 U.S. 546 (1993), the Supreme Court provided that ''[w]hether or not . . . a tangible asset, is depreciable for Federal income tax purposes depends upon the determination that the asset is actually exhausting, and that such exhaustion is susceptible of measurement.'' *Newark Morning Ledger Co.* v. *United States* at 566. Although unrecoverable commodities used in a business are depreciable, recoverable commodities used in a business are not depreciable because they do not suffer from exhaustion, wear and tear, or obsolescence over a determinable useful life. *O'Shaughnessy* v. *Commissioner,* 332 F.3d 1125 (8th Cir. 2003); *Arkla, Inc.* v. *United States,* 765 F.2d 487 (5th Cir. 1985). The recoverable quantity of a commodity used in the business suffers no change in its physical characteristics or value as a result of its use in the business. The comment seemed to imply that precious metals were a single unit of property that was partially depreciable and partially non-depreciable, rather than quantities of metal in separate categories of property, one of which is depreciable.

The Treasury Department and the IRS have determined that it would not be appropriate for purposes of determining a CFC's QBAI to take into account the CFC's entire adjusted basis in an asset that is only partially depreciable. Taking into account basis that is not subject to a depreciation allowance would overstate a CFC's QBAI. For example, in the case of precious metals that are partially depreciable, such as platinum used in a catalyst, a portion of the metal may be subject to exhaustion, wear and tear, or obsolescence during its useful life. The remainder of the metal is recoverable for reuse or sale. When initially purchased, the value and tax basis of the recoverable portion generally should reflect the forward price of such metal. The value and tax basis of the depreciable portion of the metal generally should reflect the net present value of the expected returns generated by the metal. QBAI is a proxy for the base upon which non-extraordinary, tangible returns should be calculated. See S. Comm. on the Budget, Reconciliation Recommendations Pursuant to H. Con. Res. 71, S. Print No. 115–20, at 371 (2017) (''Senate Explanation'') (The provision approximates . . . tangible income . . . as a 10-percent return on . . . the adjusted basis in tangible depreciable property.''). Therefore, only the depreciable portion of the precious metal, which is associated with the tangible returns, should be taken into account in this measurement. Given that liquid commodity markets exist for these precious metals, taxpayers could sell the future rights to the recoverable portion of the asset (thereby reducing their economic outlay and exposure with respect to the property). Cf. *Guardian Industries* v. *Commissioner,* 97 T.C. 308 (1991) (taxpayer regularly sold silver waste from photographic development process to refiners). Thus, the depreciable portion of the asset represents the taxpayer's economic investment in generating tangible returns. Accordingly, the comment is not adopted.

The comment also requested that in calculating the adjusted basis in precious metals for QBAI purposes, the final regulations provide that class lives applied to precious metals for purposes of the alternative depreciation system (''ADS'') are the same class lives determined under the principles of Rev. Rul. 2015–11, rather than the ADS class lives of the equipment to which the precious metals attach. This recommendation is not adopted because Rev. Rul. 2015–11 does not establish principles for determining class lives of the precious metals discussed therein, but rather addresses whether certain precious metals are depreciable under the facts and circumstances described in the ruling.

One comment requested that all expenditures paid or incurred with respect to the acquisition, exploration, and development of a mine or other natural deposit should be taken into account in determining QBAI. The comment stated that such exploration and development costs for mining operations are ''of a type'' for which depreciation is allowed, even though the costs are recovered through depletion rather than depreciation. The comment also recommended that the adjusted basis in a mine or other natural deposit included as QBAI should be determined using cost depletion, rather than percentage depletion.

Section 951A(d)(1)(B) limits property taken into account in determining QBAI to tangible property of a type with respect to which a deduction is allowable under section 167. Congress did not extend the definition of QBAI to property of a type with respect to which a deduction is allowed under section 611 (the allowance of deduction for depletion). Although the comment focused on the similarities between cost depletion and depreciation, there are also similarities between cost depletion of mineral properties and the acquisition cost of inventory. The inventory cost of a severed mineral includes the cost depletion attributable to the severed mineral. See section 263A and § 1.263A–1(e)(3)(ii)(J). In essence, the acquisition cost of the mineral property recovered through cost depletion is the inventory cost of the severed mineral, and QBAI does not include inventory. Accordingly, the recommendation is not adopted.

The proposed regulations define ''tangible property'' as property for which the depreciation deduction provided by section 167(a) is eligible to be determined under section 168 without regard to section 168(f)(1), (2), or (5) and the date placed in service. See proposed § 1.951A–3(c)(2). Section 168(k) increases the depreciation deduction allowed under section 167(a) with respect to qualified property, which includes tangible and certain intangible property. The final regulations revise the definition of tangible property in § 1.951A–3(c)(2) to exclude certain intangible property to which section 168(k) applies, namely, computer software, qualified film or television productions, and qualified live theatrical productions described in section 168(k)(2)(A).

C. Determination of Basis Under Alternative Depreciation System

For purposes of determining QBAI, the adjusted basis in specified tangible property is determined by using ADS under section 168(g), and by allocating the depreciation deduction with respect to such property for the CFC inclusion year ratably to each day during the period in the taxable year to which such depreciation relates. See section 951A(d)(3) [3] and § 1.951A–3(e)(1). ADS

[3] As enacted, section 951A(d) contains two paragraphs designated as paragraph (3). The section 951A(d)(3) discussed in this part V.C of the Summary of Comments and Explanation of Revisions section relates to the determination of the adjusted basis in property for purposes of calculating QBAI.

applies to determine the adjusted basis in property for purposes of determining QBAI regardless of whether the property was placed in service before the enactment of section 951A, or whether the basis in the property is determined under another depreciation method for other purposes of the Code. See section 951A(d)(3) and § 1.951A–3(e)(2). In addition, for purposes of determining income and E&P, a CFC is generally required to use ADS for depreciable property used predominantly outside the United States. See section 168(g) and §§ 1.952–2(c)(2)(ii) and (iv) and 1.964–1(a)(2). However, a CFC may instead use for this purpose a depreciation method used for its books of account regularly maintained for accounting to shareholders or a method conforming to United States generally accepted accounting principles (a ''non-ADS depreciation method'') if the differences between ADS and the non-ADS depreciation method are immaterial. See §§ 1.952–2(c)(2)(ii) and (iv) and 1.964–1(a)(2).

A comment recommended that ADS not be required under section 951A(d) for specified tangible property placed in service before the enactment of section 951A. This comment asserted that section 951A(d)(3) does not compel the conclusion that ADS must be used for assets placed in service before the enactment of section 951A, and cited compliance concerns as a justification for not requiring the use of ADS with respect to such assets. Another comment recommended that the final regulations permit taxpayers to elect to compute the adjusted basis in all specified tangible property of a CFC—not just specified tangible property placed in service before the enactment of section 951A—under the method that the CFC uses to compute its tested income and tested loss, even if such method is not ADS.

Section 951A(d)(3) is clear that the adjusted basis in specified tangible property is determined using ADS under section 168(g), and therefore the final regulations do not adopt the recommendation to permit taxpayers an election to compute the adjusted basis in all specified tangible property under the CFC's non-ADS depreciation method. However, recognizing the potential burden of re-determining the basis under ADS of all specified tangible property held by a CFC placed in service before the enactment of section 951A, and given that a non-ADS depreciation method is permissible only when there are immaterial differences between ADS and such other method, the Treasury Department and the IRS have determined that a transition rule is warranted for CFCs that are not required to use ADS for purposes of computing income and E&P. Accordingly, the final regulations provide that a CFC that is not required to use ADS for purposes of computing income and E&P may elect, for purposes of calculating QBAI, to use its non-ADS depreciation method to determine the adjusted basis in specified tangible property placed in service before the first taxable year beginning after December 22, 2017, subject to a special rule related to salvage value. See § 1.951A–3(e)(3)(ii). The election also applies to the determination of a CFC's partner adjusted basis under § 1.951A–3(g)(3) in partnership specified tangible property placed in service before the CFC's first taxable year beginning after December 22, 2017. See id. This transition rule does not apply for purposes of determining the foreign-derived intangible income (''FDII'') of a domestic corporation. Cf. section 250(b)(2)(B) (in calculating deemed tangible income return for purposes of FDII, QBAI is generally determined under section 951A(d)).

A comment requested that the final regulations confirm that the use of ADS in determining the basis in specified tangible property, whether placed in service before or after the enactment of section 951A, for purposes of determining QBAI is not a change in method of accounting or, if it is a change in method, that global approval under section 446(e) be given for such a change. Another comment recommended that a CFC switching to ADS for property placed in service before the enactment of section 951A should not be required to file Form 3115 to request an accounting method change for depreciation, and that the cumulative adjustment should be taken into account for the adjusted basis in the specified tangible property as of the CFC's first day of the first year to which section 951A applies.

The determination of the adjusted basis in property under section 951A(d) is not a method of accounting subject to the consent requirement of section 446(e). As a result, a CFC does not need the Commissioner's consent to use ADS for purposes of determining its adjusted basis in specified tangible property in determining its QBAI. A CFC that uses ADS for purposes of determining QBAI should determine the correct basis in the property under ADS as of the CFC's first day of the first taxable year to which section 951A applies and apply section 951A(d)(3) accordingly. The final regulations also clarify that the adjusted basis in property is determined based on the cost capitalization methods of accounting used by the CFC for purposes of determining its tested income and tested loss. See § 1.951A–3(e)(1).

A change to ADS from another depreciation method for purposes of computing tested income or tested loss is a change in method of accounting subject to section 446(e). The Treasury Department and the IRS expect that many CFCs that are not already using ADS for purposes of computing income and E&P will change their method of accounting for depreciation to the straight-line method, the applicable recovery period, or the applicable convention under ADS to comply with § 1.952–2(c)(2)(iv) and § 1.964–1(c)(1)(iii)(c) and that most of such changes are already eligible for automatic consent under Rev. Proc. 2015–13, 2015–5 I.R.B. 419. The Treasury Department and the IRS intend to publish another revenue procedure further expanding the availability of automatic consent for depreciation changes and updating the terms and conditions in sections 7.07 and 7.09 of Rev. Proc. 2015–13 (related to the source, separate limitation classification, and character of section 481(a) adjustments) to take into account section 951A. After the change in accounting method, the basis in specified tangible property will be the correct basis for purposes of determining income, E&P, and QBAI.

The final regulations clarify the interaction between the daily proration of depreciation rule in section 951A(d)(3) and the applicable convention under ADS. Under section 951A(d)(3), the adjusted basis in property is determined by allocating the depreciation deduction with respect to property to each day during the period in the taxable year to which the depreciation relates. The half-year convention, mid-month convention, and mid-quarter convention in section 168(d) treat property as placed in service (or disposed of) for purposes of section 168 at the midpoint of the taxable year, month, or quarter, as applicable, irrespective of when the property was placed in service (or disposed of) during the taxable year. The final regulations clarify that the period in the CFC inclusion year to which such depreciation relates is determined without regard to the applicable convention under section 168(d). See § 1.951A–3(e)(1). Accordingly, in the year property is placed in service, the depreciation deduction allowed for the taxable year is prorated from the day the property is actually placed in service, and, in the year property is disposed of, the depreciation deduction allowed for the taxable year is prorated to the date of disposition. Allocating depreciation to each day during the period in which the property is used irrespective of the applicable convention ensures that the average of the aggregate adjusted basis as of the close of each quarter is properly adjusted to reflect the depreciation allowed for the taxable year.

The Treasury Department and the IRS continue to study issues related to the determination of QBAI for purposes of section 951A. In particular, the Treasury Department and the IRS are aware that a CFC that is a partner in a foreign partnership may have difficulty determining the basis in partnership property under ADS, particularly when the partnership is not controlled by U.S. persons. Comments are requested on methodologies for determining the basis in partnership property owned by a foreign partnership that is not controlled directly or indirectly by U.S. persons.

D. Dual Use Property

Section 951A(d)(2)(B) provides that if property is used both in the production of tested income and income that is not tested income, the property is specified tangible property in the same proportion that the gross income described in section 951A(c)(1)(A) produced with respect to such property bears to the total gross income produced with respect to such property. The proposed regulations provide that if tangible property is used in both the production of gross tested income and other income, the portion of the adjusted basis in the property treated as adjusted basis in specified tangible property is determined by multiplying the average of the adjusted basis in the property by the dual use ratio. See proposed § 1.951A–3(d)(1). If the property produces directly identifiable income for a CFC inclusion year, the dual use ratio is the ratio of the gross tested income produced by the property to the total amount of gross income produced by the property. See proposed § 1.951A–3(d)(2)(i). In all other cases, the dual use ratio is the ratio of the gross tested income of the tested income CFC to the total amount of gross income of the tested income CFC. See proposed § 1.951A–3(d)(2)(ii).

Under the proposed regulations, the dual use ratio requires a determination of whether and how much gross income is ‘‘directly identifiable’’ with particular specified tangible property. The Treasury Department and the IRS recognize that application of the directly identifiable standard could result in substantial uncertainty and controversy. In addition, the Treasury Department and the IRS have determined that the rules under section 861 for allocating a depreciation or amortization deduction attributable to property owned by a CFC to categories of income of the CFC represent a reliable and well-understood proxy for determining the type of income produced by the property, even in circumstances where there is no income that is ‘‘directly identifiable’’ with the property. Accordingly, the final regulations provide that the dual use ratio, with respect to tangible property for a CFC inclusion year, is the ratio calculated as the sum of the amount of the depreciation deduction with respect to the property for the CFC inclusion year that is allocated and apportioned to gross tested income for the CFC inclusion year under § 1.951A–2(c)(3) and the depreciation with respect to the property capitalized to inventory or other property held for sale, the gross income or loss from the sale of which is taken into account in determining tested income for the CFC inclusion year, divided by the sum of the total amount of the depreciation deduction with respect to the property for the CFC inclusion year and the total amount of depreciation with respect to the property capitalized to inventory or other property held for sale, the gross income or loss from the sale of which is taken into account for the CFC inclusion year. See § 1.951A–3(d)(3). The dual use ratio also applies with respect to partnership specified tangible property, except, for this purpose, determined by reference to a tested income CFC's distributive share of the amounts described in the preceding sentence. See § 1.951A–3(g)(3)(iii) and part V.E of this Summary of Comments and Explanation of Revisions section.

A comment recommended that the final regulations clarify, through additional examples, that the method for determining the dual use ratio with respect to specified tangible property does not change if (i) the dual use property becomes or ceases to be specified tangible property during the year, or (ii) the dual use property gives rise to increasing or decreasing gross tested income across quarters in a taxable year. The Treasury Department and the IRS have determined that additional examples are unnecessary. As the comment suggests, the dual use ratio is not determined on the basis of the type and amount of gross income produced by the property as of any particular quarter close, but rather is determined based on the type and the amount of gross income produced by the property for the entire taxable year. In this regard, there is no ambiguity in the language in the regulations, and therefore no need for additional clarification.

The rules in § 1.951A–3 do not apply in determining QBAI for purposes of computing the deduction of a domestic corporation under section 250 for its FDII. See proposed § 1.250(b)–2 (REG–104464–18, 84 FR 8188 (March 6, 2019)) for the QBAI rules related to the FDII deduction. However, it is anticipated that, except as indicated in part V.D of this Summary of Comments and Explanation of Revisions section with respect to the election to use a non-ADS depreciation method for assets placed in service before the enactment of section 951A, revisions similar to the revisions to proposed § 1.951A–3 discussed in parts V.B through E of this Summary of Comments and Explanation of Revisions section will be made to proposed § 1.250(b)–2.

E. Partnership QBAI

Section 951A(d)(3) [4] provides that, for purposes of calculating QBAI, if a CFC holds an interest in a partnership at the close of the CFC's taxable year, the CFC takes into account its distributive share of the aggregate of the partnership's adjusted basis in depreciable tangible property used in its trade or business that is used in the production of tested income (determined with respect to the CFC's distributive share of income with respect to such property). For this purpose, a CFC's distributive share of the adjusted basis in any property is the CFC's distributive share of income with respect to such property. See section 951A(d)(3) (flush language).

The proposed regulations implement the rule in section 951A(d)(3) by providing that, if a tested income CFC holds an interest in one or more partnerships as of the close of a CFC inclusion year, the QBAI of the tested income CFC for the CFC inclusion year is increased by the sum of the tested income CFC's partnership QBAI with respect to each partnership for the CFC inclusion year. See proposed § 1.951A–3(g)(1). A tested income CFC's partnership QBAI with respect to a partnership is the sum of the tested income CFC's share of the partnership's adjusted basis in partnership specified tangible property as of the close of a partnership taxable year that ends with

[4] As enacted, section 951A(d) contains two paragraphs designated as paragraph (3). The section 951A(d)(3) discussed in this part V.E of the Summary of Comments and Explanation of Revisions section relates to tangible property held by a partnership taken into account in calculating the QBAI of a CFC partner.

or within a CFC inclusion year. See proposed § 1.951A–3(g)(2)(i). A tested income CFC's share of the partnership's adjusted basis in partnership specified tangible property is determined by multiplying the partnership's adjusted basis in the property by the tested income CFC's partnership QBAI ratio with respect to the property. See id. Similar to the rule for dual use property, under the proposed regulations, the tested income CFC's partnership QBAI ratio with respect to partnership specified tangible property depends on whether the property produces directly identifiable income. In the case of partnership specified tangible property that produces directly identifiable income for a partnership taxable year, a tested income CFC's partnership QBAI ratio with respect to the property is the tested income CFC's distributive share of the gross income produced by the property for the partnership taxable year that is included in the gross tested income of the tested income CFC for the CFC inclusion year to the total gross income produced by the property for the partnership taxable year. See proposed § 1.951A–3(g)(2)(ii)(A). In the case of partnership specified tangible property that does not produce directly identifiable income for a partnership taxable year, a tested income CFC's partnership QBAI ratio with respect to the property is the tested income CFC's distributive share of the gross income of the partnership for the partnership taxable year that is included in the gross tested income of the tested income CFC for the CFC inclusion year to the total amount of gross income of the partnership for the partnership taxable year. See proposed § 1.951A–3(g)(2)(ii)(B).

The partnership QBAI ratio in the proposed regulations is effectively an amalgamation of two ratios—a ratio that describes the portion of the partnership specified tangible property that is used in the production of gross tested income (that is, the dual use ratio) and a ratio that describes a tested income CFC's proportionate interest in all the income produced by the property. The final regulations disaggregate the partnership QBAI ratio into these two ratios—the dual use ratio (as defined in § 1.951A–3(d)(3)) and a new proportionate share ratio (as defined in § 1.951A–3(g)(4)(ii)). Accordingly, the final regulations provide that a tested income CFC's ''partner adjusted basis'' with respect to partnership specified tangible property—that is, the adjusted basis in partnership specified tangible property taken into account in determining the tested income CFC's partnership QBAI—is generally, in the case of partnership specified tangible property used in the production of only gross tested income (''sole use partnership property''), the tested income CFC's proportionate share of the partnership's adjusted basis in the property for the partnership taxable year. See § 1.951A–3(g)(3)(ii). A tested income CFC's partner adjusted basis with respect to partnership specified tangible property used in the production of gross tested income and gross income that is not gross tested income (''dual use partnership property'') is generally the tested income CFC's proportionate share of the partnership's adjusted basis in the property for the partnership taxable year, multiplied by the tested income CFC's dual use ratio with respect to the property (determined by reference to the tested income CFC's distributive share of amounts described in § 1.951A–3(d)(3)). See § 1.951A–3(g)(3)(iii). In either case, a tested income CFC's proportionate share of the partnership's adjusted basis in partnership specified tangible property is the partnership's adjusted basis in the property for the partnership taxable year multiplied by the tested income CFC's proportionate share ratio with respect to the property for the partnership taxable year.

As discussed in part V.D of this Summary of Comments and Explanation of Revisions section, a rule that determines adjusted basis in specified tangible property taken into account in determining QBAI by reference to the ''directly identifiable income'' attributable to such property would lead to substantial uncertainty and controversy, whereas the rules under section 861 for allocating and apportioning depreciation attributable to property owned by a CFC to categories of income represent a longstanding proxy for determining the types of income produced by the property. For this reason, the final regulations determine the dual use ratio by reference to the amount of depreciation deductions allocated to gross tested income under § 1.951A–2(c)(3). Similarly, the Treasury Department and the IRS have determined that calculating partnership QBAI by reference to the ''directly identifiable income'' produced by partnership specified tangible property would lead to substantial uncertainty and controversy, and that a partner's share of a depreciation deduction with respect to partnership specified tangible property is a reliable proxy for determining a CFC's distributive share of income with respect to such property. Accordingly, the final regulations determine the proportionate share ratio with respect to partnership specified tangible property also by reference to the depreciation with respect to the property, rather than the directly identifiable income attributable to the property or the gross income of the partner. See § 1.951A–3(g)(4)(ii).

A comment requested clarification that the partnership QBAI ratio in the proposed regulations, which references the amount of ''gross income'' produced by the property, is determined by reference to ''gross taxable income,'' rather than gross section 704(b) income. The comment also recommended that if the partnership QBAI ratio is determined by reference to a partnership's gross taxable income, that section 704(c) allocations (including items of income under the remedial method) be taken into account in determining the CFC's distributive share of the gross income produced by the property for the partnership taxable year. The specific comment regarding the calculation of gross income produced by property has been mooted by the change to determining the dual use and proportionate share ratios by reference to the depreciation with respect to the property. However, the comment remains relevant to the calculation of the depreciation with respect to property for purposes of determining the dual use ratio and proportionate share ratio.

For purposes of the proportionate share ratio, the final regulations do not adopt this recommendation. Section 704(b) income represents a partner's economic interest in the partnership and therefore more closely aligns with the economic production of income from partnership property that QBAI is intended to measure. Accordingly, the final regulations clarify that the proportionate share ratio is determined by reference to the amount of depreciation with respect to property (and a tested income CFC's distributive share of such amount) determined under section 704(b). See § 1.951A–3(g)(4)(i). Therefore, items determined under section 704(c) are not taken into account for purposes of determining a tested income CFC's partner adjusted basis in partnership specified tangible property held by a partnership and thus the tested income CFC's partnership QBAI with respect to the partnership. However, because the dual use ratio is determined by reference to the allocation and apportionment of depreciation deductions to gross tested income of a tested income CFC, and thus is based on a taxable income concept, items determined under section 704(c) are taken into account for purposes of determining the dual use ratio.

The proposed regulations provide that partnership QBAI is the sum of the tested income CFC's share of the partnership's adjusted basis in partnership specified tangible property. See proposed § 1.951A–3(g)(2)(i). A comment recommended that the final regulations clarify that the adjusted basis in partnership specified tangible property includes any basis adjustment under section 743(b). In response to this comment, the final regulations clarify that an adjustment under section 743(b) to the adjusted basis in partnership specified tangible property with respect to a tested income CFC is taken into account in determining the tested income CFC's partner adjusted basis in the partnership specified tangible property. See § 1.951A–3(g)(3) and (7). In addition, to ensure that the adjusted basis in property other than tangible property is not inappropriately shifted to tangible property for purposes of determining QBAI, the final regulations provide that basis adjustments to partnership specified tangible property under section 734(b) are taken into account only if they are basis adjustments under section 734(b)(1)(B) or 734(b)(2)(B) attributable to distributions of tangible property or basis adjustments under section 734(b)(1)(A) or 734(b)(2)(A) by reason of gain or loss recognized by a distributee partner under section 731(a). See § 1.951A–3(g)(6).

A comment also requested that the final regulations clarify that a CFC's QBAI is increased not only for partnership specified tangible property owned by partnerships in which the CFC is a direct partner, but also for lower-tier partnerships in which the CFC indirectly owns an interest through one or more upper-tier partnerships. The final regulations make this clarification. See § 1.951A–3(g)(1).

Finally, a comment suggested that, under section 951A(d)(3) and the proposed regulations, a disposition of a partnership interest by a tested income CFC could result in the CFC including its distributive share of partnership income in its gross tested income, but not taking into account any of the partnership's basis in partnership specified tangible property for purposes of calculating the CFC's QBAI. Under section 951A(d)(3) and proposed § 1.951A–3(g)(1), if a CFC holds an interest in a partnership at the close of the taxable year of the CFC, the CFC takes into account its share of a partnership's adjusted basis in certain tangible property for QBAI purposes. However, neither section 951A(d)(3) nor the proposed regulations have a rule that would allow a tested income CFC to increase its QBAI for its share of partnership QBAI if the tested income CFC owned the partnership interest for part of the year but not at the close of the CFC taxable year. However, a partner that disposes of its entire partnership interest before the close of the CFC taxable year could have a distributive share of partnership income if the partnership taxable year closes before the close of the CFC taxable year, including by reason of the disposition itself. See section 706(c)(2)(A) (taxable year of partnership closes with respect to partner whose entire interest terminates, including by reason of a disposition).

The Treasury Department and the IRS agree that a partner that has a distributive share of income from a partnership should also be permitted partnership QBAI with respect to the partnership. Therefore, the final regulations are revised to provide that a partner need only hold an interest in a partnership during the CFC inclusion year to have partnership QBAI with respect to the partnership. See § 1.951A–3(g)(1). The final regulations also provide that section 706(d) applies to determine a tested income CFC's partner adjusted basis in partnership specified tangible property owned by a partnership if there is a change in the tested income CFC's interest in the partnership during the CFC inclusion year. See § 1.951A–3(g)(3)(i).

F. Disregard of Basis in Specified Tangible Property Held Temporarily

Section 951A(d)(4) authorizes the issuance of regulations or other guidance that the Secretary determines are appropriate to prevent the avoidance of the purposes of section 951A(d), including regulations or other guidance which provide for the treatment of property that is transferred, or held, temporarily. The proposed regulations provide that if a tested income CFC (''acquiring CFC'') acquires specified tangible property with a principal purpose of reducing the GILTI inclusion amount of a U.S. shareholder for any U.S. shareholder inclusion year, and the tested income CFC holds the property temporarily but over at least the close of one quarter, the specified tangible property is disregarded in determining the acquiring CFC's average adjusted basis in specified tangible property for purposes of determining the acquiring CFC's QBAI for any CFC inclusion year during which the tested income CFC held the property (the ''temporary ownership rule''). See proposed § 1.951A–3(h)(1). If an acquisition of specified tangible property would, but for the temporary ownership rule, reduce the GILTI inclusion amount of a U.S. shareholder, then the property is ''per se'' treated as temporarily held and acquired with a principal purpose of reducing the GILTI inclusion amount of a U.S. shareholder if the tested income CFC holds the property for less than a 12-month period that includes at least the close of one quarter during its taxable year (the ''12-month per se rule''). See id. Therefore, the specified tangible property is disregarded under the proposed regulations for purposes of determining QBAI.

Although some comments supported the temporary ownership rule and, in particular, stated that the principal purpose standard was a reasonable interpretation of section 951A(d)(4), many comments asserted that it was overbroad. Comments expressed particular concern with the scope of the 12-month per se rule, noting for example that it could (i) apply to transactions not motivated by tax avoidance such as ordinary course transactions, (ii) require burdensome asset-level tracking of CFC property, and (iii) lead to uncertain return filing positions or financial accounting volatility if property acquired by a CFC has not yet been held for 12 months when a U.S. shareholder files its return or publishes a financial statement.

Comments suggested various ways to minimize the scope of the temporary ownership rule, including (i) eliminating the 12-month per se rule; (ii) converting the 12-month per se rule into a rebuttable presumption; (iii) providing an exception for property transferred among related CFCs owned by a U.S. shareholder when there is no decrease in that shareholder's GILTI inclusion amount (for this purpose, treating a consolidated group as a single entity); (iv) providing that, for purposes of applying the 12-month per se rule, a CFC's holding period in property received in a nonrecognition transaction include a tacked holding period under section 1223(2); (v) providing de minimis or ordinary course transaction exceptions; (vi) excepting acquisitions of property that result in effectively connected income or subpart F income to the transferor; (vii) tailoring the rule's application depending on whether property is acquired from or transferred to unrelated parties; and (viii) establishing a period of ownership that will not be considered temporary.

In response to the comments, the Treasury Department and the IRS have determined that it is appropriate to narrow the scope of the temporary ownership rule, and that the following changes strike the appropriate balance between mitigating the compliance burden and identifying transactions that have the potential to avoid the purposes of section 951A(d). First, the final regulations make certain technical changes that are intended to refine and clarify the application of the temporary ownership rule. For example, the rule applies, in part, based on a principal purpose of increasing the DTIR of a U.S. shareholder (''applicable U.S. shareholder'') and, for this purpose, certain related U.S. persons are treated as a single applicable U.S. shareholder. See § 1.951A–3(h)(1)(i) and (vi). Further, in response to comments, the final regulations clarify that property held temporarily over a quarter close is subject to the temporary ownership rule only if the holding of the property over the quarter close would, without regard to the temporary ownership rule, increase the DTIR of an applicable U.S. shareholder for its taxable year. See § 1.951A–3(h)(1)(i).

The final regulations also clarify that a CFC's holding period for purposes of this rule does not include the holding period for which the property was held by any other person under section 1223. See § 1.951A–3(h)(1)(v). The final regulations do not adopt the request to permit a tacking of holding periods for purpose of the temporary ownership rule, because temporary acquisitions of property through nonrecognition transactions, particularly between related parties, can artificially increase a U.S. shareholder's DTIR by, for instance, causing the property to be taken into account for an additional quarter close for purposes of calculating QBAI.

The final regulations also modify the 12-month per se rule to make it a presumption rather than a per se rule. Therefore, under the final regulations the temporary ownership rule is presumed to apply only if property is held for less than 12 months. See § 1.951A–3(h)(1)(iv)(A). This presumption may be rebutted if the facts and circumstances clearly establish that the subsequent transfer of the property was not contemplated when the property was acquired by the acquiring CFC and that a principal purpose of the acquisition of the property was not to increase the DTIR of the applicable U.S. shareholder. See id. As a result of this change, a taxpayer generally will know when it files its return whether the temporary ownership rule will apply. In order to rebut the presumption, a taxpayer must attach a statement to the Form 5471 filed with the taxpayer's return for the taxable year of the CFC in which the subsequent transfer occurs disclosing that it rebuts the presumption. See id. In response to a comment, the final regulations include a second presumption that generally provides that property is presumed not to be subject to the temporary ownership rule if held for more than 36 months. See § 1.951A–3(h)(1)(iv)(B).

The final regulations clarify that the adjusted basis in property may be disregarded under the rule for multiple quarter closes. See § 1.951A–3(h)(1)(ii). However, in the case that the temporary holding results in the property being taken into account for only one additional quarter close of a tested income CFC in determining the DTIR of a U.S. shareholder inclusion year, the adjusted basis in the property is disregarded under this rule only as of the first tested quarter close that follows the acquisition. See id.; see also § 1.951A–3(h)(1)(vii)(C) (*Example 2*) (disregarding the adjusted basis in specified tangible property for a single quarter due to differences in CFC taxable years). This rule ensures that the adjusted basis in property is not inappropriately disregarded in excess of the amount necessary to eliminate the increase in the DTIR of the applicable U.S. shareholder by reason of the temporary holding.

The final regulations also include a safe harbor for certain transfers involving CFCs. See § 1.951A–3(h)(1)(iii). Under the safe harbor, the holding of property as of a tested quarter close is not treated as increasing the DTIR if certain conditions are satisfied. In general, the safe harbor applies to transfers between CFCs that are owned in the same proportion by the U.S. shareholder, have the same taxable years, and are all tested income CFCs. The safe harbor is intended to exempt non-tax motivated transfers from the rule when the temporary holding of the property does not have the potential for increasing the DTIR of an applicable U.S. shareholder. The addition of the safe harbor responds to the comment requesting that the rule be tailored depending on whether the transfers involve related or unrelated parties.

In addition, in response to comments, the final regulations include four new examples to illustrate the application of the rule. See § 1.951A–3(h)(1)(vii). The examples identify a transaction that is not subject to the rule due to the application of the safe harbor, and three transactions that are subject to the rule, including transfers of property between CFCs that have different taxable years, and an acquisition of property by a tested income CFC from a tested loss CFC, which cannot have QBAI pursuant to § 1.951A–3(b) and (c)(1).

The final regulations do not adopt the comments requesting a de minimis or ordinary course transaction exception. The Treasury Department and the IRS have determined that these types of exceptions are unnecessary due to the narrowed and refined scope of the rule in the final regulations, including as a result of converting the 12-month per se rule into a rebuttable presumption, adding the safe harbor, and illustrating certain transactions that are targeted by the rule through new examples. Moreover, because the rule is limited to the temporary holding of depreciable property used in a CFC's trade or business (that is, specified tangible property), the Treasury Department and the IRS do not anticipate that many such assets will be acquired and disposed of in the ''ordinary course'' of a CFC's business, however that standard is defined.

Finally, the final regulations do not adopt the comment requesting an exception for acquisitions of property that result in effectively connected income or subpart F income to the transferor. The Treasury Department and the IRS have concluded that, unlike the rule that addresses disqualified basis in § 1.951A–2(c)(5) and § 1.951A–3(h)(2), the treatment of gain recognized by the transferor (if any) is not relevant for purposes of determining whether it is appropriate to take into account specified tangible property held temporarily for purposes of determining QBAI. Nothing in section 951A(d)(4) or the legislative history suggests that transfers of property that result in income or gain that is subject to U.S. tax should be exempt from the rule. Indeed, the policy concern underlying this rule—the temporary holding of specified tangible property with a principal purpose of increasing the DTIR of a U.S. shareholder—is present regardless of whether the basis in the specified tangible property reflects gain that is subject to U.S. tax.

G. Determination of Disqualified Basis

The determination of disqualified basis is relevant for purposes of both the rule in § 1.951A–2(c)(5) (allocating deductions attributable to disqualified basis to residual CFC gross income) and the rule in § 1.951A–3(h)(2) (disregarding disqualified basis for purposes of calculating QBAI). This part V.G of the Summary of Comments and Explanation of Revisions section describes comments and revisions related to the computation of disqualified basis both for purposes of § 1.951A–2(c)(5) and § 1.951A–3(h)(2). For other comments and revisions related to the computation of disqualified basis discussed in the context of the application of § 1.951A–2(c)(5), see part IV.E.3 and 4 of this Summary of Comments and Explanation of Revisions section.

As described in part IV.E.1 of this Summary of Comments and Explanation of Revisions section, the proposed regulations define ''disqualified basis'' in property as the excess of the property's adjusted basis immediately after a disqualified transfer, over the sum of the property's adjusted basis immediately before the disqualified transfer and the qualified gain amount with respect to the disqualified transfer. See proposed § 1.951A–3(h)(2)(ii)(A). In addition, the proposed regulations define ''disqualified transfer'' as a transfer of property by a transferor CFC during a transferor CFC's disqualified period to a related person in which gain was recognized, in whole or in part. See proposed § 1.951A–3(h)(2)(ii)(C). One comment recommended that the definition of disqualified transfer not be expanded to include transfers of property to unrelated persons. The final regulations do not modify the definition of disqualified transfer, and therefore the term continues to be limited to transfers of property by a CFC to a related person. See § 1.951A–3(h)(2)(ii)(C)(*2*).

A comment noted that the proposed regulations do not explain whether the computation of disqualified basis in property takes into account basis adjustments under section 743(b) or section 734(b) allocated to that property under section 755 during the disqualified period. The final regulations clarify that adjustments under sections 732(d), 734(b), and 743(b) can create, increase, or reduce disqualified basis in property. See § 1.951A–3(h)(2)(ii)(A) and (B).

The proposed regulations provide that disqualified basis may be reduced or eliminated through depreciation, amortization, sales or exchanges, section 362(e), and other methods. See proposed § 1.951A–3(h)(2)(ii)(A). The final regulations clarify the circumstances under which disqualified basis is reduced. Specifically, the final regulations provide that disqualified basis in property is reduced to the extent that a deduction or loss attributable to the disqualified basis in the property is taken into account in reducing gross income, including any deduction or loss allocated to residual CFC gross income by reason of the rule in § 1.951A–2(c)(5). See § 1.951A–3(h)(2)(ii)(B)(*1*)(*i*).

The proposed regulations provide that, if the adjusted basis in property with disqualified basis and adjusted basis other than disqualified basis is reduced or eliminated, then the disqualified basis in the property is reduced or eliminated in the same proportion that the disqualified basis bears to the total adjusted basis in the property. See proposed § 1.951A–3(h)(2)(ii)(A). The final regulations adopt this rule without substantial modification, except that the final regulations provide a special rule where a loss is recognized on a taxable sale or exchange. See §§ 1.951A–2(c)(5)(ii) and 1.951A–3(h)(2)(ii)(B)(*1*)(*i*). In the case of a loss recognized on a taxable sale or exchange of the property, the loss is treated as attributable to disqualified basis to the extent thereof. See id. Therefore, to the extent of the disqualified basis, the loss on the sale is allocated to residual CFC gross income and the disqualified basis in the property is reduced.

A comment noted that the proposed regulations do not specify when the proportion of the disqualified basis to the total adjusted basis in the property is determined for purposes of determining the reduction to disqualified basis. The comment recommended that the Treasury Department and the IRS clarify that this proportion is determined immediately after the disqualified transfer and does not change throughout the useful life of the property absent a subsequent disqualified transfer. The final regulations do not adopt this recommendation, because the proportion of disqualified basis to total adjusted basis in property can change by reason of one or more transactions subsequent to a disqualified transfer. For instance, a loss recognized on a taxable sale of property with disqualified basis and adjusted basis other than disqualified basis, which reduces disqualified basis to the extent of the loss under § 1.951A–3(h)(2)(ii)(B)(*1*)(*i*), will have the effect of decreasing the proportion of disqualified basis to total adjusted basis. See, generally, 1.951A–3(h)(2)(ii)(B) and this part V.G of the Summary of Comments and Explanation of Revisions for additional adjustments to disqualified basis.

A comment recommended that the Treasury Department and the IRS clarify that depreciation or amortization that is disregarded for purposes of determining tested income or tested loss under proposed § 1.951A–2(c)(5) nonetheless reduces the adjusted basis in the property. The final regulations do not disregard a deduction or loss attributable to disqualified basis, but rather allocate and apportion such deduction or loss to residual CFC gross income. Depreciation or amortization that is allocated and apportioned to residual CFC gross income continues to reduce the adjusted basis in the property in accordance with section 1016(a)(2). Accordingly, clarification that any depreciation or amortization attributable to disqualified basis in property reduces adjusted basis in the property is unnecessary.

Disqualified basis in property is generally an attribute specific to the property itself, rather than an attribute of a CFC or a U.S. shareholder with respect to the property. The final regulations, however, provide rules to treat basis in other property as disqualified basis if such basis was determined, in whole or in part, by reference to the basis in property with disqualified basis. See § 1.951A–3(h)(2)(ii)(B)(*2*). These rules are intended to prevent taxpayers from eliminating disqualified basis in nonrecognition transactions that would otherwise have the effect of granting taxpayers the benefit of the disqualified basis. This could occur, for example, if property with disqualified basis is transferred in a nonrecognition transaction, such as a like-kind exchange under section 1031, in exchange for other depreciable property. In that case, a portion of the basis in the newly acquired property is treated as disqualified basis. Also, disqualified basis may be duplicated through certain nonrecognition transactions. For example, if property with disqualified basis is transferred in a section 351 exchange, both the stock received by the transferor and the property received by the transferee will have disqualified basis, in each case determined by reference to the disqualified basis in the property in the hands of the transferor immediately before the transaction. See § 1.951A–3(h)(2)(ii)(B)(2)(*ii*). The final regulations also provide that basis arising from other transactions, such as distributions of property from a partnership to a partner, can create disqualified basis in property to the extent the transaction has the effect of shifting disqualified basis from one property to another. See § 1.951A–3(h)(2)(ii)(B)(2)(*i*). This might occur, for example, if low-basis property is distributed in liquidation of a high-basis partner under section 732(b) resulting in a decrease to disqualified basis in other partnership property under section 734(b)(2)(B). See § 1.951A–3(h)(2)(iii)(D) *Example 4*.

The final regulations also clarify how disqualified basis is disregarded under § 1.951A–3(h)(2)(i) in the case of dual use property and partnership specified tangible property for purposes of determining QBAI and partnership QBAI, respectively. The portion of the adjusted basis in dual use property with disqualified basis that is taken into account for determining QBAI is the average adjusted basis in the property, multiplied by the dual use ratio, and then reduced by the disqualified basis in the property. See § 1.951A–3(h)(2)(i)(B); see also § 1.951A–3(d)(4) *Example.* For purposes of determining partnership QBAI, a CFC's partner adjusted basis with respect to partnership specified tangible property with disqualified basis is first determined under the general rules of § 1.951A–3(g)(3)(i) and then reduced by the partner's share of the disqualified basis in the property. See § 1.951A–3(h)(2)(i)(C). In either case, the allocation and apportionment rules of § 1.951A–2(c)(5) are not taken into account for purposes of applying the dual use ratio and the proportionate share ratio to determine the amount of the adjusted basis in property that is reduced by the disqualified basis. See § 1.951A–3(h)(2)(i)(B) and (C).

The Treasury Department and the IRS request comments on the application of the rules that reduce or increase disqualified basis including, for example, how the rules should apply in an exchange under section 1031 where property with disqualified basis is exchanged for property with no disqualified basis.

VI. Comments and Revisions to Proposed § 1.951A–4—Tested Interest Expense and Tested Interest Income

A. Determination of Specified Interest Expense Under Netting Approach

Section 951A(b)(2)(B) reduces net DTIR of a U.S. shareholder by interest expense that reduces tested income (or increases tested loss) for the taxable year of the shareholder to the extent the interest income attributable to such expense is not taken into account in determining such shareholder's net CFC tested income. The proposed regulations adopt a netting approach to determine the amount of interest expense of a U.S. shareholder described in section 951A(b)(2)(B) (''specified interest expense''), defining such amount as the excess of such shareholder's pro rata share of ''tested interest expense'' of each CFC over its pro rata share of ''tested interest income'' of each CFC. See proposed § 1.951A–1(c)(3)(iii).

Several comments agreed with the adoption of the netting approach, principally on the grounds of administrability and policy. However, one comment noted that the netting approach for determining specified interest expense is potentially more favorable to taxpayers than permitted by the statute because it provides that specified interest expense is reduced by all interest income included in the tested income of the U.S. shareholder (subject to certain exceptions), even if earned from unrelated parties.

The Treasury Department and the IRS have determined that the netting approach appropriately balances administrability concerns with the purpose and language of section 951A(b)(2)(B). As discussed in the preamble to the proposed regulations, the netting approach avoids the complexity related to a tracing approach, under which a U.S. shareholder's pro rata share of each item of interest expense of a CFC would have to be matched to the shareholder's pro rata share of the interest income attributable to such interest expense received by a CFC. Furthermore, the amount of specified interest expense should, in most cases, be the same whether determined under a netting approach or under a tracing approach. In this regard, while the netting approach does not require a factual link between the interest income and interest expense, only interest income included in gross tested income, other than income included by reason of section 954(h) or (i) (that is, ''qualified interest income''), is taken into account for this purpose. Because interest income is generally FPHCI under section 954(c)(1)(A) and qualified interest income is not taken into account under the netting approach, interest income taken into account under the netting approach is generally limited to interest income that is excluded from subpart F income by reason of section 954(c)(3) or (6). Furthermore, because the exceptions under section 954(c)(3) and (6) apply only to interest income paid or accrued by related party foreign corporations, both the interest income excluded by reason of section 954(c)(3) or (6) and the interest expense attributable to such interest income will generally be taken into account in determining the net CFC tested income of either the same U.S. shareholder or a related U.S. shareholder. Accordingly, the final regulations retain the netting approach for determining specified interest expense, with certain modifications described in part VI.B through D of this Summary of Comments and Explanation of Revisions section. See § 1.951A–1(c)(3)(iii).

B. Definition of Tested Interest Expense and Tested Interest Income

For purposes of determining specified interest expense, ''tested interest expense'' is defined in the proposed regulations as interest expense paid or accrued by a CFC that is taken into account in determining the tested income or tested loss of the CFC, reduced by the qualified interest expense of the CFC. See proposed § 1.951A–4(b)(1)(i). For this purpose, ''interest expense'' is defined as any expense or loss treated as interest expense under the Code or regulations, and any other expense or loss incurred in a transaction or series of integrated or related transactions in which the use of funds is secured for a period of time if such expense or loss is predominantly incurred in consideration of the time value of money. See proposed § 1.951A–4(b)(1)(ii). The proposed regulations include similar definitions for ''tested interest income'' and ''interest income.'' See proposed § 1.951A–4(b)(2)(i) and (ii).

One comment asserted that the concepts of ''predominantly incurred in consideration of the time value of money'' and ''predominantly derived from consideration of the time value of money'' are new and unclear, and lack analogies in other authorities. The comment also stated that this new standard is further complicated by references to ''a transaction or series of integrated or related transactions.'' Other comments asserted that creating a new standard for interest expense and interest income specifically for specified interest expense would result in additional confusion and complexity. Another comment questioned the inclusion of interest equivalents in the definition of interest in the proposed regulations and noted that, because the definition covers both interest income and interest expense, there is a particular risk of whipsaw to the government unless the authority for the regulations is clear. Some comments recommended that the final regulations replace the definitions of interest expense and interest income in the proposed regulations with references to interest expense or interest income under any provision of the Code or regulations, or as a consequence of issuing or holding an instrument that is treated as indebtedness for Federal income tax purposes, such as instruments characterized as indebtedness under judicial factors or administrative guidance, or payments ''equivalent to interest.''

The Treasury Department and the IRS did not intend to create a new standard of interest solely for purposes of determining specified interest expense. In this regard, the reduction of net DTIR by specified interest expense under section 951A(b)(2)(B) and the limitation on business interest under section 163(j) are meant to achieve similar policy goals, namely preventing certain interest expense in excess of interest income from being taken into account in determining taxable income. Further, because the amount of interest expense subject to each of these provisions is determined, in part, by reference to interest income received, each of these provisions need clear and consistent definitions of both interest expense and interest income, including when and to what extent transactions that result in a financing from an economic perspective may be treated as generating interest expense and interest income. Finally, the relevant terms used in each provision—''interest expense'' and ''interest income'' in section 951A(b)(2)(B) and ''business interest'' and ''business interest income'' in section 163(j)—do not differ meaningfully in their respective contexts and therefore do not necessitate different definitions. As a result of the foregoing, and in order to reduce administrative complexity, the Treasury Department and the IRS have determined that taxpayers and the government would benefit from the application of a single definition of interest for both section 951A(b)(2)(B) and section 163(j) (rather than the application of two partially overlapping, but ultimately different standards). Accordingly, the final regulations define ''interest expense'' and ''interest income'' by reference to the definition of interest expense and interest income under section 163(j). See § 1.951A–4(b)(1)(ii) and (2)(ii).

The regulations under section 163(j), when finalized, will address comments on the validity of the definition of interest expense and interest income that are used in those regulations. Because the final regulations adopt this definition for purposes of determining specified interest expense, the discussion in the regulations under section 163(j) will, by extension, address the validity of the definitions as used in these final regulations.

Finally, the definition of tested interest expense is revised in the final regulations to mean interest expense that is ''allocated and apportioned to gross tested income'' of a CFC under § 1.951A–2(c)(3). See § 1.951A–4(b)(1)(i). This revision does not reflect a substantive change to the definition in the proposed regulations—interest expense ''taken into account in determining the tested income or tested loss''—but rather is intended to more clearly articulate that definition.

C. Determination of Qualified Interest Expense and Qualified Interest Income

The proposed regulations provide that, for purposes of determining the specified interest expense of a U.S. shareholder, the tested interest expense and tested interest income of a ''qualified CFC'' are reduced by its ''qualified interest expense'' and ''qualified interest income,'' respectively. See proposed § 1.951A–4(b)(1) and (2). The reduction for qualified interest expense and qualified interest income is intended to neutralize the effect of interest expense and interest income attributable to the active conduct of a financing or insurance business on a U.S. shareholder's net DTIR. For example, absent the rule for qualified interest expense, the third-party interest expense of a captive finance company—to the extent its interest expense exceeds its interest income—could inappropriately increase specified interest expense (and thus reduce the net DTIR) of its U.S. shareholder. Alternatively, under a netting approach to calculating specified interest expense, the third-party interest income of a captive finance company—to the extent its interest income exceeds interest expense—could inappropriately reduce the specified interest expense (and thus increase the net DTIR) of its U.S. shareholder.

For purposes of these rules, the proposed regulations define a ''qualified CFC'' as an eligible controlled foreign corporation (within the meaning of section 954(h)(2)) or a qualifying insurance company (within the meaning of section 953(e)(3)). See proposed § 1.951A–4(b)(1)(iv). Further, ''qualified interest income'' is defined as interest income included in the gross tested income of the qualified CFC that is excluded from FPHCI by reason of section 954(h) or (i). See proposed § 1.951A–4(b)(2)(iii). The proposed regulations define ''qualified interest expense'' as the portion of the interest expense of a qualified CFC, which portion is determined based on a two-step approach. First, a qualified CFC's interest expense is multiplied by a fraction, the numerator of which is the CFC's average basis in assets which give rise to income excluded from FPHCI by reason of section 954(h) or (i), and the denominator is the CFC's average basis in all its assets. See proposed § 1.951A–4(b)(1)(iii)(A). Second, the product of the first step is reduced by the interest income of the qualified CFC that is excluded from FPHCI by reason of section 954(c)(3) or (6). See proposed § 1.951A–4(b)(1)(iii)(B). This two-step approach effectively treats all interest expense of a qualified CFC as attributable ratably to the assets of the qualified CFC that give rise to income excluded from FPHCI by reason of section 954(h) and (i), but then traces such interest expense, after attribution to such assets, to any interest income received from related CFCs to the extent thereof.

A comment indicated that the two-step approach in the proposed regulations can understate the amount of qualified interest expense. Specifically, the comment noted that the proposed regulations include related party receivables in the denominator of the fraction under the first step, thus diluting the fraction and resulting in less qualified interest expense, and then interest income from such receivables further reduce qualified interest expense dollar-for-dollar under the second step. The comment recommended that, to avoid double counting, related party receivables should be excluded from the fraction in the first step.

The Treasury Department and the IRS agree with the comment that, under the two-step approach to the proposed regulations, related party receivables are effectively double-counted, and therefore the final regulations eliminate the second step reduction for interest income included in the gross tested income of a qualified CFC that is excluded from FPHCI by reason of section 954(c)(3) or (6). See § 1.951A–4(b)(1)(iii)(A). This revision ensures that a related party receivable is not double-counted in the determination of qualified interest expense, and thus qualified interest expense as calculated under the final regulations more accurately reflects the interest expense incurred to earn income earned from unrelated parties in an active financing or insurance business. Further, the Treasury Department and the IRS preferred the elimination of the second step reduction for resolving the double-counting issue, rather than the recommended alternative of excluding related party receivables from the fraction in the first step, because the elimination of an additional step substantially simplifies the calculation of qualified interest expense.

In addition, with regard to the effect of related party receivables on the computation of qualified interest expense, the final regulations clarify that a receivable that gives rise to income that is excludible from FPHCI by reason of section 954(c)(3) or (6) is excluded from the numerator of the fraction (that is, the receivable is not a ''qualified asset'' within the meaning of § 1.951A–4(b)(1)(iii)(B), a new term in the final regulations), notwithstanding that such receivable may also give rise to income excluded from FPHCI by reason of section 954(h) or (i). See § 1.951A–4(b)(1)(iii)(B)(*2*). Similarly, the final regulations clarify that interest income that is excludible from FPHCI by reason of section 954(c)(3) or (6) is excluded from qualified interest income, notwithstanding that such income may also be excluded from FPHCI by reason of section 954(h) or (i). See § 1.951A–4(b)(2)(iii)(B). These clarifications ensure that the computation of qualified interest income and qualified interest expense is determined by reference only to interest expense and interest income attributable to a CFC's active conduct of a financing or insurance business with unrelated persons.

A comment recommended that, for purposes of determining the amount of qualified interest expense of a CFC, instruments or obligations that give rise to interest income derived by active securities and derivatives dealers that is excluded from FPHCI under section 954(c)(2)(C) should also be included in the numerator for calculating qualified interest expense. The final regulations adopt this recommendation by including such instruments or obligations in the definition of qualified assets. See § 1.951A–4(b)(1)(iii)(B)(*1*). Similarly, interest income excluded from FPHCI under section 954(c)(2)(C) is included in the definition of qualified interest income. See § 1.951A–4(b)(2)(iii)(A).

A comment suggested that the benefit to some U.S. shareholders from the exclusion for qualified interest expense may not justify the difficulty and expense to determine the amount excluded. Therefore, the comment recommended that the final regulations provide taxpayers the ability to either establish the amount of their qualified interest expense or, alternatively, to assume that none of their interest expense constitutes qualified interest expense. The Treasury Department and the IRS agree that taxpayers should not be required to reduce their CFCs' tested interest expense by their CFCs' qualified interest expense if the taxpayer determines that the value of such reduction is outweighed by the cost of compliance. Accordingly, the final regulations provide that a CFC's qualified interest expense is taken into account only to the extent established by the CFC. See § 1.951A–4(b)(1)(iii)(A). Thus, if a CFC does not establish an amount of qualified interest expense, the taxpayer can assume that none of the CFC's interest expense is qualified interest expense. However, regardless of whether a CFC avails itself of the reduction for qualified interest expense, the exclusion for qualified interest income is mandatory. See § 1.951A–4(b)(2)(iii)(A).

A comment recommended an exception from the qualified interest rules for a CFC that is a qualified insurance company under section 954(i), or in the alternative, an exception from the qualified interest rules for any CFC that is part of a financial services group defined in section 904(d)(2)(C)(ii), with the result that all interest income and interest expense of such CFCs would be tested interest income and tested interest expense taken into account in determining a U.S. shareholder's specified interest expense. The comment speculated that the qualified interest rules may have been crafted to address a CFC involved in a financial services business that was not a member of a business group primarily engaged in a financial services business. The Treasury Department and the IRS decline to adopt this recommendation. The qualified interest rules are intended to neutralize the effect of an active finance business or an active business of a CFC on the specified interest expense (and thus net DTIR) of its U.S. shareholder, irrespective of whether the CFC is a member of a business group primarily engaged in such activities. In contrast, the recommended exception would permit interest income from an active finance business or active insurance business in excess of the associated interest expense to net against other interest expense in the computation of specified interest expense.

The same comment also explained that some foreign financial service groups borrow externally through a holding company to fund their qualifying insurance company subsidiaries that earn qualified interest income. The comment noted that the proposed regulations create a mismatch between the treatment of the interest income of the subsidiaries, which is qualified interest income of a qualified CFC and thus not taken into account in calculating specified interest expense, and the interest expense of the holding company, which is not qualified interest expense of a qualified CFC and thus is taken into account in calculating specified interest expense. To address this mismatch, the final regulations eliminate the term ''qualified CFC.'' Therefore, if a holding company that is not engaged in an active financing or insurance business borrows to fund the activities of subsidiaries that are engaged in an active financing or insurance business, the interest expense of the holding company may constitute qualified interest expense and thus be disregarded in determining specified interest expense. In this regard, the final regulations retain the rule that the adjusted basis in stock of a subsidiary is treated as basis in a qualified asset to the extent that the assets of the subsidiary are qualified assets. See § 1.951A–4(b)(1)(iii)(B)(*3*). In addition, the final regulations provide a new rule that treats a CFC that owns 25 percent or more of the capital or profits interest in a partnership as owning its attributable share of any property held by the partnership, as determined under the principles of § 1.956–4(b). See § 1.951A–4(b)(1)(iii)(B)(*4*). Therefore, under the final regulations, whether, and to what extent, the interest expense of a CFC is qualified interest expense depends entirely on the nature of the assets it holds directly and indirectly, and not on whether the CFC itself is engaged in an active financing or insurance business.

Finally, the definition of qualified interest expense in the proposed regulations includes a parenthetical that indicates that the fraction for determining qualified interest expense cannot exceed one. See proposed § 1.951A–4(b)(1)(iii). The Treasury Department and the IRS have determined that, because the numerator (average basis in qualified assets) is a subset of the denominator (average basis in all assets), this fraction can never exceed one, even without regard to the parenthetical. Therefore, the final regulations eliminate the parenthetical in the definition of qualified interest expense as surplusage. See § 1.951A–4(b)(1)(iii)(A).

D. Interest Expense Paid or Accrued by a Tested Loss CFC

Under the proposed regulations, tested interest expense includes interest expense paid or accrued by a tested loss CFC, notwithstanding that the proposed regulations provide that a tested loss CFC has no QBAI. See proposed § 1.951A–3(b) and § 1.951A–4(b)(1). As discussed in part V.A of this Summary of Comments and Explanation of Revisions section, the final regulations continue to provide that a tested loss CFC has no QBAI. See § 1.951A–3(b). Comments recommended that, if the rule excluding the QBAI of a tested loss CFC were retained, the final regulations should also exclude all interest expense of a tested loss CFC from the calculation of tested interest expense. Comments asserted that exempting interest expense of tested loss CFCs from the calculation of specified interest expense, in conjunction with the exclusion of the QBAI of tested loss CFCs, would produce appropriate results, though one comment acknowledged that such a rule might need to be accompanied by an anti-abuse rule. One comment asserted that excluding interest expense of a tested loss CFC would be appropriate under section 951A(b)(2)(B), because that subparagraph refers only to interest expense ''taken into account under subsection (c)(2)(A)(ii),'' which, according to the comment, describes only deductions taken into account in determining tested income. Another comment recommended that, rather than excluding all the interest expense of a tested loss CFC, the final regulations should exclude the interest expense incurred to fund acquisitions of tangible property held by the tested loss CFC. The comments suggested that including interest expense of a tested loss CFC (or incurred to acquire tangible property of the tested loss CFC), which reduces net DTIR of a U.S. shareholder, while excluding the QBAI of a tested loss CFC, which increases the net DTIR of a U.S. shareholder, results in unfair and asymmetrical treatment of tested loss CFCs.

The final regulations do not adopt the recommendation to exclude all interest expense of a tested loss CFC, because such exclusion would be inconsistent with the text of section 951A(d)(2)(A) and footnote 1563 of the Conference Report and could create an incentive to inappropriately shift interest expense to a tested loss CFC in order to avoid reducing a U.S. shareholder's net DTIR. The reference to section 951A(c)(2)(A)(ii) in section 951A(b)(2)(B) encompasses all deductions properly allocable to gross tested income, including deductions taken into account in determining tested loss. See section 951A(c)(2)(B)(i) (defining tested loss as the excess of deduction described in section 951A(c)(2)(A)(ii) over gross tested income described in section 951A(c)(2)(A)(i)).

However, in response to the comments, the final regulations reduce a tested loss CFC's tested interest expense by its tested loss QBAI amount, an amount equal to 10 percent of the QBAI that the tested loss CFC would have had if it were instead a tested income CFC. See § 1.951A–4(b)(1)(i) and (iv) and (c) *Example 5*. This rule has the effect of not taking into account the tested interest expense of a tested loss CFC to the extent that such tested interest expense is less than or equal to a notional 10 percent return on the tested loss CFC's tangible assets that are used in the production of gross tested income.

E. Interest Expense Paid or Accrued to a U.S. Shareholder

As discussed in part VI.A of this Summary of Comments and Explanation of Revisions section, the proposed regulations adopt a netting approach with the result that specified interest expense is the excess of a U.S. shareholder's pro rata share of tested interest expense of each CFC over its pro rata share of tested interest income of each CFC. See proposed § 1.951A–1(c)(3)(ii). Several comments recommended that the final regulations exclude interest expense paid by a CFC to a U.S. shareholder or a related U.S. person from the definition of tested interest expense. One comment recommended that this exclusion be applied to a payment of interest to any U.S. person, whereas two comments suggested that this exclusion also apply to interest expense to the extent the related interest income is subject to U.S. tax as effectively connected income or subpart F income. These comments asserted that interest expense should not generally increase specified interest expense to the extent that the related interest income is subject to U.S. tax at the regular statutory rate, at least in the hands of a U.S. shareholder or related person. According to these comments, excluding interest expense under these circumstance would be consistent with the policy of section 951A(b)(2)(B), which does not reduce a U.S. shareholder's net DTIR for a CFC's interest expense to the extent that the related income increases the U.S. shareholder's net CFC tested income.

The final regulations do not adopt these recommendations. Section 951A(b)(2)(B) generally reduces net DTIR of a U.S. shareholder by the full amount of its pro rata share of the interest expense of a CFC, but then provides a limited exception for the CFC's interest expense to the extent the related interest income is taken into account in determining the net CFC tested income of the U.S. shareholder. In effect, the rule generally reduces net DTIR of a U.S. shareholder by its pro rata share of the net external interest expense incurred by its CFCs. Thus, borrowing between commonly-owned CFCs generally does not reduce net DTIR, whereas external borrowing generally does. The statute does not provide a similar exception for any payment of interest to the extent the related interest income is subject to U.S. tax, nor is there any indication in the legislative history of the Act that Congress intended that the Treasury Department and the IRS should provide such an exception. Further, an exception for interest paid to U.S. persons could permit taxpayers to circumvent section 951A(b)(2)(B) by borrowing externally at the U.S. shareholder level and then on-lending the borrowed funds to CFCs. In this case, the borrowing by the U.S. shareholder would not reduce net DTIR, notwithstanding that the borrowing is factually traceable to the acquisition by the CFC of specified tangible property and net DTIR would have been reduced if instead the CFC had borrowed directly from the third party.

VII. Comments and Revisions to Proposed § 1.951A–5—Domestic Partnerships and Their Partners

A. Proposed Hybrid Approach

The proposed regulations provide that, in general, a domestic partnership that is a U.S. shareholder (''U.S. shareholder partnership'') of a CFC (''partnership CFC'') determines a GILTI inclusion amount, and partners of the partnership that are not also U.S. shareholders of the partnership CFC take into account their distributive share of the partnership's GILTI inclusion amount. See proposed § 1.951A–5(b). Partners that are U.S. shareholders of a partnership CFC (''U.S. shareholder partners''), however, do not take into account their distributive share of the partnership's GILTI inclusion amount to the extent determined by reference to the partnership CFC but instead are treated as proportionately owning the stock of the partnership CFC within the meaning of section 958(a) as if the domestic partnership were an aggregate of its partners. To accomplish this result, the proposed regulations, with respect to U.S. shareholder partners, treat the domestic partnership in the same manner as a foreign partnership, which is treated as an aggregate of its partners under section 958(a)(2). As a result, a U.S. shareholder partner determines its GILTI inclusion amount taking into account its pro rata share of any tested item of the partnership CFC. If the U.S. shareholder partnership holds other partnership CFCs in which the partner is not a U.S. shareholder, then a separate GILTI computation is made at the partnership level with respect to such partnership CFCs' tested items, and the partner includes its distributive share of this separately determined GILTI inclusion amount as well. See proposed § 1.951A–5(c). This hybrid approach (''proposed hybrid approach'') of treating a domestic partnership as an entity with respect to partners that are not U.S. shareholders, but as an aggregate of its partners with respect to partners that are U.S. shareholders, is intended to balance the policies underlying GILTI with the relevant statutory provisions. In particular, a domestic partnership is a U.S. person under sections 957(c) and 7701(a)(30) and thus a U.S. shareholder under section 951(b), which suggests that a domestic partnership should generally be treated as an entity for purposes of subpart F. On the other hand, if a domestic partnership were treated strictly as an entity for purposes of section 951A, a domestic partnership with a GILTI inclusion amount would be ineligible for foreign tax credits under section 960(d) or a deduction under section 250 with respect to its GILTI inclusion amount.

In the proposed regulations, the Treasury Department and the IRS rejected an approach that would treat a domestic partnership as an entity with respect to all its partners (''pure entity approach'') for purposes of section 951A, because treating a domestic partnership as the section 958(a) owner of stock in all cases would frustrate the GILTI framework by creating unintended planning opportunities for well-advised taxpayers and traps for the unwary. However, the Treasury Department and the IRS also did not adopt an approach that would treat a domestic partnership as an aggregate with respect to all its partners (''pure aggregate approach'') for purposes of GILTI, because such an approach would be inconsistent with the treatment of domestic partnerships as entities for purposes of subpart F.

B. Comments on Proposed Hybrid Approach

Two comments were received on the treatment of domestic partnerships and their partners under the proposed regulations. These comments raised concerns regarding the procedural and computational complexity of the proposed hybrid approach. The comments highlighted the difficulty that some partnerships would have in determining whether and to what extent its partners are U.S. shareholder partners of partnership CFCs in order to determine whether and with respect to which partnership CFCs to calculate a partnership-level GILTI inclusion amount for each of its partners. In this regard, a partner of a U.S. shareholder partnership may itself be a U.S. shareholder of one or more partnership CFCs, but not a U.S. shareholder of one or more others. According to the comments, the proposed hybrid approach also raises administrability concerns under the centralized partnership audit regime enacted by section 1101 of the Bipartisan Budget Act of 2015, Public Law 114–74 (BBA) as some determinations are made at the partnership level and others at the partner level.

The comments also raised concerns that the determination of a GILTI inclusion amount at the partnership level and the disparate treatment of U.S. shareholder partners and non-U.S. shareholder partners under the proposed hybrid approach leads to uncertainty regarding the application of sections 959 and 961 (regarding PTEP and corresponding basis adjustments) with respect to domestic partnerships and partnership CFCs, basis adjustments with respect to partnership interests and partnership CFCs, and capital accounts determined and maintained in accordance with § 1.704–1(b)(2). For instance, there are no rules in the proposed regulations regarding whether and to what extent a U.S. shareholder partner's capital account in a partnership is adjusted when the U.S. shareholder partner computes its GILTI inclusion amount based on its pro rata shares of tested items of partnership CFCs. The comments noted that if the capital account of a U.S. shareholder partner is not adjusted for its pro rata shares of tested items of a partnership CFC, then the economic arrangement between the U.S. shareholder partner and other partners could be distorted.

Neither comment recommended a pure entity approach as its primary recommendation. One comment supported a pure entity approach over the proposed hybrid approach, although it recommended a pure entity approach only if a pure aggregate approach were not adopted. Another comment recommended that the pure entity approach not be adopted in any case. Both comments noted that the pure entity approach would avoid the complexities inherent in the proposed hybrid approach and conform the treatment of domestic partnerships for GILTI purposes with the treatment under subpart F before the enactment of section 951A. However, the comments noted that a pure entity approach is inconsistent with the purpose of section 951A, which is to compute a single GILTI inclusion amount for a taxpayer by reference to the items of all the taxpayer's CFCs. The comments agreed that the preamble to the proposed regulations articulated valid policy reasons for rejecting the pure entity approach, namely, that such approach presents both an inappropriate planning opportunity as well as a trap for the unwary.

Both comments primarily recommended a pure aggregate approach. Under a pure aggregate approach, a domestic partnership would not have a GILTI inclusion amount, and thus no partner of the partnership would have a distributive share of such amount. Rather, for purposes of determining the partner's GILTI inclusion amount, a partner would be treated as owning directly the stock of CFCs owned by a domestic partnership for purposes of determining its own GILTI inclusion amount. Thus, under a pure aggregate approach, unlike under the proposed hybrid approach or a pure entity approach, a partner that is not a U.S. shareholder of a partnership CFC would not have a pro rata share of the partnership CFC's tested items or a distributive share of a GILTI inclusion amount of the partnership. According to comments, a pure aggregate approach would reduce complexities inherent in the proposed hybrid approach in terms of administration and compliance. A pure aggregate approach would also avoid the disparate and arbitrary effects of a pure entity approach, under which a U.S. shareholder's GILTI inclusion amount may vary significantly depending on whether it owns CFCs through a domestic partnership as opposed to directly or through a foreign partnership. The comments acknowledged that while domestic partnerships have historically been treated as entities for purposes of subpart F, the enactment of section 951A and its reliance on shareholder-level calculations justifies a reconsideration of this approach.

One comment recommended that the pure aggregate approach apply also to the determination of whether a foreign corporation owned by a domestic partnership is a CFC. Under this approach, a domestic partnership would also be treated as a foreign partnership for purposes of determining whether a domestic partnership is a U.S. shareholder of a foreign corporation and therefore whether the foreign corporation is owned in the aggregate more than 50 percent (by voting power or value) by U.S. shareholders. The same comment suggested that if this approach were not adopted, the final regulations should either adopt the proposed hybrid approach or an aggregate approach that would require even non-U.S. shareholder partners to take into account their pro rata shares of tested items of CFCs owned by a domestic partnership. This approach, in contrast to the pure entity approach and the proposed hybrid approach, would permit a partner that is not a U.S.

shareholder with respect to a partnership CFC to nonetheless aggregate its pro rata shares of the tested items of such partnership CFC with its pro rata shares of the tested items of any non-partnership CFCs with respect to which the partner is a U.S. shareholder for purposes of determining a single GILTI inclusion amount for the partner.

The other comment recommended that if the pure aggregate approach or the pure entity approach were not adopted, the final regulations adopt an approach under which a domestic partnership would be treated as an entity for purposes of determining its GILTI inclusion amount and each partner's distributive share of such amount, but then each partner's overall GILTI inclusion amount would be adjusted by its separately-computed GILTI inclusion amount with respect to non-partnership CFCs of the partner. This adjustment would be positive to the extent of the partner's net CFC tested income with respect to CFCs owned outside a domestic partnership, but it could be negative if the partner had a ''net CFC tested loss'' (that is, aggregate pro rata shares of tested loss in excess of aggregate pro rata share of tested income) with respect to such CFCs.

C. Adoption of Aggregate Treatment for Purposes of Determining GILTI Inclusion Amounts

After consideration of the comments received, the Treasury Department and the IRS have decided not to adopt the proposed hybrid approach in the final regulations. Instead, the final regulations adopt an approach that treats a domestic partnership as an aggregate for purposes of determining the level (that is, partnership or partner) at which a GILTI inclusion amount is calculated and taken into gross income. Specifically, the final regulations provide that, in general, for purposes of section 951A and the section 951A regulations, and for purposes of any other provision that applies by reference to section 951A or the section 951A regulations (for instance, sections 959, 960, and 961), a domestic partnership is not treated as owning stock of a foreign corporation within the meaning of section 958(a). See § 1.951A–1(e)(1). Rather, the partners of a domestic partnership are treated as owning proportionately the stock of CFCs owned by the partnership in the same manner as if the partnership were a foreign partnership under section 958(a)(2). See id. Because a domestic partnership is not treated as owning section 958(a) stock for purposes of section 951A, a domestic partnership does not have a GILTI inclusion amount and thus no partner of the partnership has a distributive share of a GILTI inclusion amount. Furthermore, because only a U.S. shareholder can have a pro rata share of a tested item of a CFC under section 951A(e)(1) and § 1.951A–1(d), a partner that is not a U.S. shareholder of a CFC owned by the partnership does not have a pro rata share of any tested item of the CFC. For the reasons discussed in this part VII.C of the Summary of Comments and Explanation of Revisions section, the Treasury Department and the IRS have determined that this approach best reconciles the relevant statutory provisions, the policies underlying GILTI, and the administrative and compliance concerns raised by the comments.

Since the enactment of subpart F, domestic partnerships have generally been treated as entities, rather than as aggregates of their partners, for purposes of determining whether a foreign corporation is a CFC. See § 1.701–2(f) *Example 3* (concluding that a domestic partnership that wholly owns a foreign corporation is treated as an entity and the U.S. shareholder of the foreign corporation, and that the foreign corporation is a CFC for section 904 purposes). In addition, domestic partnerships have generally been treated as entities for purposes of determining the U.S. shareholder that has the subpart F inclusion with respect to such foreign corporation. But cf. §§ 1.951–1(h) and 1.965–1(e) (treating certain domestic partnerships owned by CFCs as foreign partnerships for purposes of determining the U.S. shareholder that has a subpart F inclusion with respect to CFCs owned by such domestic partnerships).

The GILTI rules employ the basic subpart F architecture in several regards, such as for purposes of determining a U.S. shareholder's pro rata share of tested items. See section 951A(e)(1). Nevertheless, there is no indication that Congress intended to incorporate the historical treatment of domestic partnerships under subpart F into the GILTI regime, particularly given that respecting a domestic partnership as the owner under section 958(a) of the stock of a CFC for purposes of GILTI would frustrate the statutory framework. In addition, no provision in the Code prescribes the treatment of domestic partnerships for purposes of section 958(a) in determining GILTI.

Given the silence in the statute with respect to the treatment of domestic partnerships for purposes of GILTI, the Act's legislative history, and the overall significance of the GILTI regime with respect to the taxation of CFC earnings after the Act, the Treasury Department and the IRS have determined that it is an appropriate occasion to reexamine whether a domestic partnership should be treated as an entity or an aggregate in determining the owners of section 958(a) stock for purposes of sections 951 and 951A. The 1954 legislative history makes clear that this determination should be based on the policies of the provision at issue. See H.R. Rep. No. 83–2543, at 59 (1954) (Conf. Rep.). In this regard, the Act fundamentally changed the policies relating to the taxation of CFC earnings relative to those in 1962. Moreover, an aggregate approach applies if it is appropriate to carry out the purpose of a provision of the Code, unless an entity approach is specifically prescribed and clearly contemplated by the relevant statute. Cf. § 1.701–2(e).

As discussed in the preamble to the proposed regulations, an aggregate approach to domestic partnerships furthers the purposes of the GILTI regime. It is consistent with the general intent of the GILTI regime to determine tax liability at the U.S. shareholder level on an aggregate basis rather than on a CFC-by-CFC basis. See Senate Explanation at 371 (''The committee believes that calculating GILTI on an aggregate basis, instead of on a CFC-by-CFC basis, reflects the interconnected nature of a U.S. corporation's global operations and is a more accurate way of determining a U.S. corporation's global intangible income.''); see also House Ways and Means Committee, 115th Cong., Rep. on H.R. 1, H.R. Rep. No. 115–409, at 389 (Comm. Print 2017) (''[I]n making this measurement, the Committee recognizes the integrated nature of modern supply chains and believes it is more appropriate to look at a multinational enterprise's foreign operations on an aggregate basis, rather than by entity or by country.''). A pure entity approach undermines this overall framework in two ways. First, under a pure entity approach, well-advised taxpayers might avail themselves of domestic partnerships to segregate tested items in a manner that is inconsistent with the overall framework of section 951A. In this regard, taxpayers generally would lower their tax liability by separating through one or more domestic partnerships their CFCs with high-taxed tested income and tested interest expense from their CFCs with low-taxed tested income, QBAI, and tested losses. Second, a pure entity approach would represent a trap for an unwary taxpayer by, for example, preventing the use of the tested losses of CFCs directly held by a taxpayer to offset the tested income of CFCs held by the taxpayer through one or more domestic partnerships. This result would not occur if the domestic partnership were treated as an aggregate of its partners. In this regard, the proposal to ''adjust'' a partner's distributive shares of its domestic partnerships' GILTI inclusion amount by the partner's net CFC tested income and the net CFC tested loss calculated with respect to the partner's CFCs held outside the partnership would not fully address these concerns. That is, the partner would be permitted the full benefit of its aggregate pro rata share of tested losses with respect to CFCs outside the partnership, but the specified interest expense with respect to CFCs outside the partnership would be effectively segregated from the QBAI of CFCs inside the partnership (and therefore would not reduce the partner's net DTIR), and vice versa.

In addition, an aggregate approach with respect to section 958(a) furthers the policies of other provisions related to section 951A. The legislative history makes clear that Congress intended for a domestic corporate partner of a domestic partnership to obtain the benefit of a foreign tax credit under section 960(d) and a deduction under section 250 with respect to a GILTI inclusion amount. See Conference Report, at 623, fn. 1517. However, only domestic corporations (not domestic partnerships) are eligible for a foreign tax credit under section 960(d) or a deduction under section 250. Moreover, absent treating a domestic partnership as an aggregate for purposes of section 951A, a domestic corporate partner's inclusion percentage under section 960(d)(2) is determined without regard to any CFC owned by the partnership because such partner has no pro rata share of the tested income of such CFC. See section 960(d)(2)(B) (the denominator of the inclusion percentage of a domestic corporation is the corporation's aggregate pro rata share of tested income amount under section 951A(c)(1)(A)). Therefore, a strict entity approach to section 960(d) might suggest that domestic corporate partners of a domestic partnership are ineligible for foreign tax credits with respect to a GILTI inclusion amount of the partnership. On the other hand, an aggregate approach to domestic partnerships furthers Congressional policy by treating domestic corporate partners as owning (within the meaning of section 958(a)) stock of CFCs owned by domestic partnerships and thus determining the domestic corporate partner's GILTI inclusion amount by reference to CFCs owned by the domestic partnership.

The final regulations treat a domestic partnership as an aggregate of its partners in determining section 958(a) stock ownership by providing that, for purposes of section 951A and the section 951A regulations, a domestic partnership is treated in the same manner as a foreign partnership. See § 1.951A–1(e)(1). For purposes of subpart F, a foreign partnership is explicitly treated as an aggregate of its partners, and rules regarding aggregation of foreign partnerships are relatively well-developed and understood. See section 958(a)(2). Therefore, rather than developing a new standard for the treatment of domestic partnerships as an aggregate, the Treasury Department and the IRS have determined that it would be simpler and more administrable to incorporate the aggregate approach by reference to the rules related to foreign partnerships under section 958(a)(2).

The final regulations do not adopt the recommendation to extend the treatment of a domestic partnership as an aggregate of its partners to the determination of U.S. shareholder and CFC status. The Treasury Department and the IRS have determined that an approach that treats a domestic partnership as an aggregate of its partners for purposes of determining CFC status would not be consistent with the relevant statutory provisions. A domestic partnership is a U.S. person under section 957(c) and section 7701(a)(30) and, therefore, can be a U.S. shareholder under section 951(b). Indeed, when subpart F was enacted in 1962, the legislative history indicated that domestic partnerships generally should be treated as U.S. shareholders. See S. Rep. No. 1881, 87th Cong., 2d Sess. 80 n.1 (1962) (''U.S. shareholders are defined in the bill as 'U.S. persons' with 10-percent stockholding. U.S. persons, in general, are U.S. citizens and residents and domestic corporations, partnerships and estates or trusts.''). Furthermore, sections 958(b) and 318(a)(3) treat a partnership (including a domestic partnership) as owning the stock of its partners for purposes of determining whether the foreign corporation is owned more than 50 percent by U.S. shareholders, which suggests that partnerships are treated as entities for purposes of determining ownership under section 958(b). See also sections 958(b) and 318(a)(2) (treating stock owned by a partnership, domestic or foreign, as owned proportionately by its partners).

The final regulations also do not extend aggregate treatment to the determination of the controlling domestic shareholders (as defined in § 1.964–1(c)(5)) of a CFC for purposes of any election made under the section 951A regulations. See § 1.951A–3(e)(3)(ii) (election to use a non-ADS depreciation method for pre-enactment property) and § 1.951A–3(h)(2)(ii)(B)(3) (election to eliminate disqualified basis). As a result, a domestic partnership that satisfies the ownership requirements of § 1.964–1(c)(5) with respect to a CFC, and not its partners, is treated as the controlling domestic shareholder of the CFC and the partnership files the relevant elections with respect to the CFC. The treatment of a domestic partnership as the controlling domestic shareholder reduces the number of persons that need to comply with the rules of § 1.964–1(c)(3), and ensures that any election with respect to a CFC that could affect the tax consequences of a U.S. person that is a partner of a domestic partnership is made by such partnership. Accordingly, the final regulations provide that the aggregation rule for domestic partnerships does not apply for purposes of determining whether a U.S. person is a U.S. shareholder, whether a U.S. shareholder is a controlling domestic shareholder (as defined in § 1.964–1(c)(5)), or whether a foreign corporation is a CFC. See § 1.951A–1(e)(2).

The treatment of domestic partnerships as foreign partnerships in the final regulations is solely for purposes of section 951A and the section 951A regulations and for purposes of any other provision that applies by reference to a GILTI inclusion amount (such as sections 959 and 961). The rule does not affect the determination of ownership under section 958(a) for any other provision of the Code (such as section 1248(a)), nor does it change whether such partner has a distributive share of a domestic partnership's subpart F inclusion under section 951(a). However, the Treasury Department and the IRS are proposing in a notice of proposed rulemaking published in the same issue of the **Federal Register** as these final regulations to apply a similar aggregate treatment to domestic partnerships for purposes of section 951.

Under section 1373(a), an S corporation is treated as a partnership and its shareholders as partners for purposes of subpart F, including section 951A. Therefore, for purposes of determining a GILTI inclusion amount of a shareholder of an S corporation, under § 1.951A–1(e), the S corporation is not treated as owning stock of a foreign corporation within the meaning of section 958(a) but instead is treated in the same manner as a foreign partnership. The Treasury Department and the IRS are studying the application of section 1373(a) with respect to section 951A, as well as the broader implications of treating S corporations as partnerships for purposes of subpart F. Comments are requested in this regard.

Conforming changes are also made to other aspects of the final regulations to account for the aggregate treatment of domestic partnerships under § 1.951A–1(e). For instance, the proposed regulations provide that, for purposes of determining whether a U.S. shareholder has a pro rata share of an accrual for purposes of sections 163(e)(3)(B)(i) and 267(a)(3)(B), a domestic partnership's pro rata share of the accrual is taken into account only to the extent that U.S. persons include in gross income a distributive share of the domestic partnership's GILTI inclusion amount. See proposed § 1.951A–5(c)(2). This rule is no longer necessary under the final regulations because a domestic partnership does not have a GILTI inclusion amount, and partners that are U.S. shareholders have their own pro rata shares of the accrual. Therefore, this rule is eliminated in the final regulations. See § 1.951A–5(c). In addition, the partnership blocker rule is modified such that it no longer applies for purposes of section 951A. See § 1.951–1(h)(1). It is no longer necessary to apply the rule for purposes of section 951A because, for such purposes, a domestic partnership is not treated as owning stock of a foreign corporation within the meaning of section 958(a).

VIII. Comments and Revisions to Proposed § 1.951A–6—Treatment of GILTI Inclusion Amount and Adjustments to E&P and Basis Related to Tested Loss CFCs

A. Increase of E&P by Tested Losses for Purposes of Section 952(c)(1)(A)

Section 951A(c)(2)(B)(ii) provides that section 952(c)(1)(A) is applied by increasing the E&P of a tested loss CFC by the amount of its tested loss. See also proposed § 1.951A–6(d). Comments asserted that proposed § 1.951A–6(d) has the effect of increasing E&P by a tested loss even if, and to the extent, the tested loss does not provide a benefit to a U.S. shareholder because its aggregate pro rata share of tested losses exceeds its aggregate pro rata share of tested income. These comments argued that this result is not appropriate because, based on the heading of section 951A(c)(2)(B)(ii) (''Coordination with subpart F to deny double benefit of losses''), the provision is limited to denying a double benefit from a tested loss (that is, a reduction in both net CFC tested income and subpart F income), and that there can be no such double benefit to the extent that the tested loss does not reduce a U.S. shareholder's net CFC tested income. These comments recommended that proposed § 1.951A–6(d) be modified such that it applies only to a tested loss to the extent the tested loss is ''used'' within the meaning of proposed § 1.951A–6(e).

The final regulations do not adopt this recommendation. Section 951A(c)(2)(B)(ii), by its terms, increases E&P for purposes of section 952(c)(1)(A) by the amount of any tested loss. There is no indication in the provision or legislative history that limiting the application of section 951A(c)(2)(B)(ii) to a tested loss that reduces net CFC tested income would be appropriate, and the heading of the provision has no legal effect. See section 7806(b). Accordingly, the rule is adopted without modification in § 1.951A–6(b).

B. Treating GILTI Inclusion Amounts as Subpart F Inclusions for Purposes of the Personal Holding Company Rules

A comment requested clarification regarding the treatment of a GILTI inclusion amount for purposes of the personal holding company rules in sections 541 through 547. Section 541(a) imposes a 20-percent tax on the undistributed personal holding company income of a personal holding company. Section 542(a) defines a ''personal holding company'' as a corporation if at least 60 percent of its adjusted ordinary gross income for the taxable year is personal holding company income and certain ownership requirements are satisfied. Section 543(a) defines ''personal holding company income'' by reference to certain categories of passive income, including dividends. However, for this purpose, dividends received by a U.S. shareholder from a CFC are excluded from the definition of personal holding company income. See section 543(a)(1)(C). The comment noted that the existing regulations under section 951 provide that for purposes of determining whether a corporate U.S. shareholder is a personal holding company, the character of a subpart F inclusion of such domestic corporation is determined as if the amount that results in the subpart F inclusion were realized directly by the corporation from the source from which it is realized by the CFC. See § 1.951–1(a)(3).

The Treasury Department and the IRS have determined that it would be inappropriate to treat any portion of a GILTI inclusion amount as personal holding company income. A GILTI inclusion amount is determined by reference to income that would have been taxed, if at all, as dividends from CFCs before the enactment of section 951A, which are specifically excluded from the definition of personal holding company income under section 543(a)(1)(C). Further, there is no indication in the legislative history that Congress intended through the enactment of section 951A to substantially change the types of income that would be taken into account in determining personal holding company status. Accordingly, the final regulations clarify that in determining whether a corporate U.S. shareholder is a personal holding company, a GILTI inclusion amount is not treated as personal holding company income (as defined in section 543(a)). See § 1.951A–5(d).

C. Adjustments to Basis Related to Net Used Tested Loss

To eliminate the potential for the duplicative use of a loss, the proposed regulations set forth rules providing for downward adjustments to the adjusted basis in stock of a tested loss CFC to the extent its tested loss was used to offset tested income of another CFC. See proposed § 1.951A–6(e). These adjustments are generally made at the time of a direct or indirect disposition of stock of the tested loss CFC. See proposed § 1.951A–6(e)(1). Comments raised many significant issues with respect to these rules.

The Treasury Department and the IRS remain concerned that, absent basis adjustments, a tested loss can result in the creation of uneconomic or duplicative loss, but have determined that the rules in the proposed regulations related to basis adjustments should not be adopted in these final regulations. Instead, the rules related to basis adjustments, including the comments received with respect to such rules, will be considered in a separate project. Accordingly, the final regulations reserve on the rules related to adjustments to stock of tested loss CFCs. See § 1.951A–6(c). Any rules issued under § 1.951A–6(c) will apply only with respect to tested losses incurred in taxable years of CFCs and their U.S. shareholders ending after the date of publication of any future guidance.

For a discussion of corresponding rules for basis adjustments within a consolidated group, as provided for in proposed §§ 1.1502–13, 1.1502–32, and

1.1502–51, see part IX.C of this Summary of Comments and Explanation of Revisions section.

IX. Comments and Revisions to Proposed §§ 1.1502–13, 1.1502–32, and 1.1502–51—Consolidated Section 951A

A. Calculation of GILTI Inclusion Amount

Section 1502 provides that consolidated return regulations will be promulgated to clearly reflect the income tax liability of a consolidated group and each member of the consolidated group (a ''member''). However, in the context of section 951A, clear reflection of the GILTI inclusion amounts of both individual members and the consolidated group as a whole is not feasible. Section 951A requires a U.S. shareholder-level calculation, where, for example, the shareholder's pro rata share of the tested income of one CFC may be offset by its pro rata share of the tested loss or QBAI of another CFC, to produce a smaller GILTI inclusion amount. Accordingly, calculating a member's GILTI inclusion amount on a completely separate-entity basis, solely based on its pro rata share of the items of its CFCs, would clearly reflect the income tax liability of the member. However, such an approach would mean that the consolidated group's GILTI inclusion amount would vary depending on which members own each CFC, particularly in cases in which the CFCs held by some members produce tested income, but the CFCs held by other members produce tested loss. This variability undermines the clear reflection of the income tax liability of the consolidated group as a whole. The Treasury Department and the IRS determined in the proposed regulations that members' GILTI inclusion amounts should be determined in a manner that clearly reflects the income tax liability of the consolidated group and that creates consistent results regardless of which member of a consolidated group owns the stock of the CFCs (''single-entity treatment''). This approach removes incentives for inappropriate planning and also eliminates traps for the unwary.

The proposed regulations accomplish these goals by providing that the GILTI inclusion amount of a member is determined pursuant to a multi-step process. As in the case of a non-member, the GILTI inclusion amount of a member equals the excess (if any) of the member's net CFC tested income over the member's net DTIR for the taxable year. See proposed § 1.951A–1(c)(1) and proposed § 1.1502–51(b). For purposes of determining a member's net CFC tested income, a member's aggregate pro rata share of tested income is determined on a separate-entity basis by aggregating its pro rata share of the tested income of each of its CFCs. See proposed § 1.1502–51(e)(1) and (12). However, a member's aggregate pro rata share of tested loss and its net DTIR for the taxable year is calculated in three steps—first, each member's pro rata share of each tested item other than tested income is determined on a separate-entity basis by reference to its pro rata share of each CFC; second, each member's pro rata share of each tested item other than tested income is aggregated into a consolidated sum; and third, each member is then allocated a portion of the consolidated sum of each such tested item based on its relative amount of tested income (the ''aggregation approach''). See proposed § 1.1502–51(e)(2), (3), (4), (5), (7), and (10). The aggregation approach has the effect of determining the aggregate amount of GILTI inclusion amounts of members on a single-entity basis, but then determining each member's share of the consolidated group's aggregate GILTI inclusion amount based on its relative pro rata share of tested income as determined on a separate-entity basis.

The Treasury Department and the IRS received several comments addressing the calculation of a member's GILTI inclusion amount. These comments generally supported single-entity treatment, but they expressed concern about the lack of clear reflection of income at the member level. The concern arises from the movement of the economic benefit (in the GILTI computation) of one member's pro rata share of a tested loss with respect to stock held by the member to other members, including those not holding such stock. The comments considered whether alternative methods could be used that both provide for single-entity treatment and minimize uneconomic results to members. In particular, the comments raised the possibility that the tested loss of a CFC should first offset the tested income of a CFC owned by the same member (the ''priority allocation approach'').

One comment evaluated the merits of the priority allocation approach versus the aggregation approach. The comment identified the tension in the section 951A context between clearly reflecting income tax liability at the consolidated group level and doing so at the member level, and it considered possible ways to alleviate this conflict. The comment ultimately endorsed maintaining the approach in proposed § 1.1502–51, due to the additional rules and complexities required to rationalize the priority allocation approach.

Two of the comments proposed similar methods for determining a member's GILTI inclusion amount. One of these comments suggested calculating the consolidated group's GILTI inclusion amount as if members holding CFC stock were divisions of a single corporation, then allocating the resulting consolidated group amount among members based on each member's net CFC tested income. For this purpose, net CFC tested income is calculated in a manner consistent with the priority allocation approach, by allowing the member's tested losses to be used first to offset the same member's tested income. The other comment suggested calculating and allocating the consolidated group's GILTI inclusion amount in the same manner, but would extend application of this method to foreign tax credits with respect to tested income. This second comment proposed using the aggregation approach to determine the amount of such credits available to the consolidated group (and the identity of the CFCs to whom the credits are attributable), but allocating certain basis adjustments in member stock related to such credits under the priority allocation approach. As an alternative, the second comment would base the allocations on the relative amounts of foreign tax credits paid by each member's CFCs.

The Treasury Department and the IRS decline to adopt these comments because they do not produce reasonable results that are consistent with single-entity treatment. In particular, the first of these comments does not provide for single-entity treatment when foreign tax credits are taken into account, instead allowing for wide variation in the availability of foreign tax credits depending on which member of a consolidated group owns the stock of the CFCs. The variation arises because a corporate U.S. shareholder is deemed to pay a portion of the foreign income taxes paid or accrued by its CFCs based on the shareholder's GILTI inclusion amount. See section 960(d). A priority allocation approach, like the separate entity calculations discussed in a preceding paragraph, would change members' GILTI inclusion amounts based on which member owns the stock of the CFCs. By extension, a priority allocation approach would also change the amount of foreign tax credits that are available to the consolidated group based on which member owns the stock of the CFCs. This disparity would allow for tax planning to maximize the availability of foreign tax credits with respect to tested income.

The second of these comments contains proposals that contravene longstanding foreign tax credit principles, by divorcing a member's income inclusion from the member's deemed payments of foreign tax. Absent a GILTI inclusion amount and ownership of a CFC that has paid or accrued foreign taxes on tested income, a U.S. shareholder can claim no foreign tax credits with respect to tested income. And yet under the proposed method, a consolidated group's foreign tax credits may reflect foreign taxes paid or accrued by CFCs of members that have no GILTI inclusion amount. For these reasons, the Treasury Department and the IRS do not adopt this method.

Based on the foregoing, the Treasury Department and the IRS continue to believe that the aggregation approach balances, to the greatest extent possible, the clear reflection of the income tax liability under section 951A of a consolidated group with reasonable results to its individual members. Accordingly, the final regulations generally adopt the aggregation approach from the proposed regulations without substantial changes.

B. Applicability Date for Consolidated Groups

For a discussion of the applicability date for § 1.1502–51, see part XI.A of this Summary of Comments and Explanation of Revisions section.

C. Basis Adjustments to Member Stock

The proposed regulations contain special rules, applicable to consolidated groups, that reflect the downward basis adjustments set forth in proposed § 1.951A–6(e) with respect to the stock of tested loss CFCs. See proposed §§ 1.1502–32(b)(3)(ii)(E) and (b)(3)(iii)(C), and 1.1502–51(c) and (d). As discussed above in part VIII.C of this Summary of Comments and Explanation of Revisions section, the Treasury Department and the IRS have determined that the rules related to basis adjustments for tested loss CFCs should not be adopted in these final regulations and will instead be considered in a separate project. Correspondingly, the special rules for consolidated groups that reflect such rules are likewise reserved. See §§ 1.1502–32(b)(3)(ii)(E) and (b)(3)(iii)(C), and 1.1502–51(c) and (d). These special rules, along with related comments, will be considered in the same project as the rules related to basis adjustments for tested loss CFCs and will apply only to taxable years of U.S. shareholders that are members of a consolidated group ending after the date of publication of the final rules.

D. Portion of Proposed Regulations not Being Finalized

The proposed regulations would treat a member as receiving tax-exempt income immediately before another member recognizes income, gain, deduction, or loss with respect to a share of the first member's stock (the ''F adjustment''). See proposed § 1.1502–32(b)(3)(ii)(F). The amount of the tax-exempt income would be determined based in part on the aggregate tested income and aggregate tested losses of the member's CFCs in prior taxable years.

The Treasury Department and the IRS have become aware of serious flaws with the F adjustment. Examples of the problems include unintended and duplicative tax benefits, distortive effects, and possible avoidance of Code provisions and regulations. Therefore, the Treasury Department and the IRS have decided not to finalize the F adjustment. As a result, taxpayers may not rely on the F adjustment. The Treasury Department and the IRS continue to study a number of issues regarding consolidated stock basis in this area.

X. Comments and Revisions to Proposed §§ 1.78–1, 1.861–12(c)(2), and 1.965–7(e) of the Foreign Tax Credit Proposed Regulations

A. Special Applicability Date Under Section 78

The foreign tax credit proposed regulations revise § 1.78–1 to reflect the amendments to section 78 made by the Act, as well as make conforming changes to reflect pre-Act statutory amendments. In addition, the foreign tax credit proposed regulations provide that amounts treated as dividends under section 78 (''section 78 dividends'') that relate to taxable years of foreign corporations that begin before January 1, 2018 (as well as section 78 dividends that relate to later taxable years), are not treated as dividends for purposes of section 245A.

Comments questioned whether the Treasury Department and the IRS have authority to treat section 78 dividends relating to taxable years of foreign corporations beginning before January 1, 2018, as ineligible for the dividends-received deduction under section 245A, which generally applies to certain dividends paid after December 31, 2017. Although some comments acknowledged that allowing a dividends-received deduction for section 78 dividends would provide taxpayers with a double benefit that clearly was not intended by Congress, the comments claimed that the statutory language directly provides for the dividends-received deduction, and therefore the rule applying proposed § 1.78–1(c) to taxable years beginning before January 1, 2018, should be eliminated.

The Treasury Department and the IRS have determined that sections 7805(a), 7805(b)(2), and 245A(g) provide ample authority for the rule and therefore finalize the proposed applicability date without change. Section 7805(a) provides that the Treasury Department and the IRS shall prescribe all needful rules and regulations for the enforcement of title 26, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. The enactment of the Act and the addition of section 245A necessitated regulations to ensure that section 78 continues to serve its intended purpose. The purpose of the section 78 dividend is to ensure that a U.S. shareholder cannot effectively both deduct and credit the foreign taxes paid by a foreign subsidiary that are deemed paid by the U.S. shareholder. See Elizabeth A. Owens & Gerald T. Ball, The Indirect Credit § 2.2B1a n.54 (1975); Stanley Surrey, ''Current Issues in the Taxation of Corporate Foreign Investment,'' 56 Columbia Law Rev. 815, 828 (June 1956) (describing the ''mathematical quirk'' that necessitated enactment of section 78). Allowing a dividends-received deduction for a section 78 dividend would undermine the purpose of the section 78 dividend because taxpayers would effectively be allowed both a credit and deduction for the same foreign tax. For this reason, section 78 (as revised by the Act) provides that a section 78 dividend is not eligible for a dividends-received deduction under section 245A.

As noted in the preamble to the foreign tax credit proposed regulations, the special applicability date rule under § 1.78–1(c) is necessary to ensure that this principle is consistently applied with respect to a CFC that uses a fiscal year beginning in 2017 as its U.S. taxable year (a ''fiscal year CFC'') in order to prevent the arbitrary disparate treatment of similarly situated taxpayers. Otherwise, a U.S. shareholder of a fiscal year CFC would effectively be able to take both a credit and a deduction for foreign taxes by claiming a section 245A deduction with respect to its section 78 dividend. In contrast, section 78 (as revised by the Act) would apply correctly to a U.S. shareholder of a CFC using the calendar year as its U.S. taxable year that was also subject to section 245A.

The special applicability date is also consistent with the grant of authority under section 245A(g) to provide rules as may be necessary or appropriate to carry out the provisions of section 245A. Section 245A was intended to provide for tax-exempt treatment of certain E&P earned through foreign subsidiaries as part of a new participation exemption system. See Conference Report, at 470 (2017) (section 245A ''allows an exemption for certain foreign income''). Notably, the amount of a dividend eligible for a dividends-received deduction under section 245A is determined based on the amount of a foreign corporation's ''undistributed foreign earnings.'' It would be incompatible with the purpose of section 245A to exempt income arising by reason of a section 78 dividend, which is not paid out of a foreign corporation's undistributed foreign earnings but instead represents earnings that could not be distributed since they were used to pay foreign tax.

B. Application of Basis Adjustment for Purposes of Characterizing Certain Stock

Proposed § 1.861–12(c)(2) clarifies certain rules for adjusting the stock basis in a 10 percent owned corporation, including that the adjustment to basis for E&P includes PTEP. Proposed § 1.861–12(c)(2)(i)(B)(*2*). Additionally, in order to account for the application of section 965(b)(4)(A) and (B), relating to the treatment of reduced E&P of a deferred foreign income corporation and increased E&P of an E&P deficit foreign corporation, proposed § 1.861–12(c)(2)(i)(B)(*1*)(*ii*) provides that, for purposes of § 1.861–12(c)(2), a taxpayer determines the basis in the stock of a specified foreign corporation as if it had made the election under § 1.965–2(f)(2), even if the taxpayer did not in fact make the election. However, the taxpayer does not include the amount by which basis with respect to a deferred foreign income corporation is increased under § 1.965–2(f)(2)(ii)(A), because the amount of that increase would be reversed if the increase were by operation of section 961. After issuance of the foreign tax credit proposed regulations, final regulations issued under section 965 (TD 9864, 84 FR 1838 (February 5, 2019)) altered the election under § 1.965–2(f)(2) to allow taxpayers to limit the reduction in basis with respect to an E&P deficit foreign corporation under the election to the amount of the taxpayer's basis in the respective share of stock of the relevant foreign corporation.

One comment requested a special rule with respect to the adjustment to basis for E&P to account for the increase to E&P of an E&P deficit foreign corporation under section 965(b)(4)(B). Alternatively, the comment requested that the adjustment for E&P not include PTEP. However, proposed § 1.861–12(c)(2)(i)(B)(*1*)(*ii*) already accounts for the increase in E&P of an E&P deficit foreign corporation under section 965(b)(4)(B) by providing for an equivalent reduction in the adjusted basis of the foreign corporation. Accordingly, the recommendation is not adopted.

Another comment requested that the rule in proposed § 1.861–12(c)(2)(i)(B)(*1*)(*ii*) be revised in light of the changes to § 1.965–2(f)(2) to similarly provide that any reductions in basis be limited to the amount of the taxpayer's basis in the 10 percent owned corporation. This comment noted that in the absence of such a rule, the application of proposed § 1.861–12(c)(2)(i)(B)(*1*)(*ii*) could reduce the adjusted basis of the stock below zero, which would be inappropriate for purposes of applying the expense allocation rules. The Treasury Department and the IRS agree that, for purposes of applying the expense allocation rules, a taxpayer should not have an adjusted basis below zero in the stock of a 10 percent owned corporation. However, rather than limit the reduction in stock basis to the amount of the taxpayer's basis in the 10 percent owned corporation, the final regulations provide that § 1.861–12(c)(2)(i)(B)(*1*)(*ii*) may cause the taxpayer's adjusted basis in the stock of the corporation to be negative, as long as the adjustment for E&P provided for in § 1.861–12(c)(2)(i)(A) increases the taxpayer's adjusted basis to zero or an amount above zero. If the taxpayer's adjusted basis in the 10 percent owned corporation is still below zero after application of § 1.861–12(c)(2)(i)(A)(*1*) and (*2*), then for purposes of § 1.861–12, the taxpayer's adjusted basis in the 10 percent owned corporation is zero for the taxable year. Section 1.861–12(c)(2)(i)(A)(*3*); see also § 1.861–12(c)(2)(i)(C)(*3*) (Example 3) and (*4*) (Example 4). The Treasury Department and the IRS have determined that allowing the adjusted basis in stock to be negative before the application of the adjustment for E&P most accurately reflects the value of the stock in the 10 percent owned corporation.

Additionally, these final regulations modify proposed § 1.861–12(c)(2)(i)(B)(*1*)(*ii*) to make clear that the adjustment in § 1.861–12(c)(2)(i)(B)(*1*)(*ii*) may cause a taxpayer's adjusted basis in stock in the 10 percent owned corporation to be negative, and to account for the changes made to § 1.965–2(f)(2). Specifically, § 1.861–12(c)(2)(i)(B)(*1*)(*ii*) now provides that the taxpayer first adjusts its basis in the 10 percent owned corporation as if it *did not* make the election in § 1.965–2(f)(2)(i) and then, if applicable, adjusts the basis in the 10 percent owned corporation by the amount described in § 1.965–2(f)(2)(ii)(B)(*1*). These changes are not intended to alter the outcome of the application of the rule to the taxpayer's adjusted basis in the stock of the 10 percent owned corporation as compared to the rule articulated in the foreign tax credit proposed regulations; rather, the changes are intended to make the rule more straightforward for taxpayers to apply and to clarify any ambiguities about the application of the rule where the adjustment exceeded the taxpayer's adjusted basis in the stock. See § 1.861–12(c)(2)(i)(C)(*1*) (Example 1) and (*2*) (Example 2).

C. Effect of Section 965(n) Election

Under section 965(n), a taxpayer may elect to exclude the amount of section 965(a) inclusions (reduced by section 965(c) deductions) and associated section 78 dividends in determining the amount of the net operating loss carryover or carryback that is deductible in the taxable year of the inclusions. Section 1.965–7(e)(1), as added by TD 9846, 84 FR 1838 (February 5, 2019), provides that, if the taxpayer makes a section 965(n) election, the taxpayer does not take into account the amount of the section 965(a) inclusions (reduced by section 965(c) deductions) and associated section 78 dividends in determining the amount of the net operating loss for the taxable year.

Proposed § 1.965–7(e)(1)(i), included in the foreign tax credit proposed regulations, provides that the amount by which the section 965(n) election creates or increases the net operating loss for the taxable year is the ''deferred amount.'' Proposed § 1.965–7(e)(1)(iv)(B) provides ordering rules to coordinate the election's effect on section 172 with the computation of the foreign tax credit limitations under section 904. The foreign tax credit proposed regulations provide that the deferred amount comprises a ratable portion of the deductions (other than the section 965(c) deduction) allocated and apportioned to each statutory and residual grouping for section 904 purposes.

Before the issuance of the foreign tax credit proposed regulations, the Treasury Department and the IRS were aware that some taxpayers were taking the position that the source and separate category of the deferred amount consisted solely of deductions allocated and apportioned to the section 965(a) inclusion. Under this approach, the deferred amount would likely consist primarily of deductions allocated and apportioned to foreign source general category income because that is the likely source and separate category of the section 965(a) inclusion; as a result, the electing taxpayer would generally have a greater amount of foreign source general category income and thus be able to credit more foreign taxes paid or accrued with respect to general category income (relative to the result under the foreign tax credit proposed regulations).

After publication of the foreign tax credit proposed regulations, a comment recommended not finalizing the proposed ordering rules because taxpayers did not have a chance to consider those ordering rules before deciding to make an election under section 965(n). The comment also argued that the foreign tax credit proposed regulations are inconsistent with the statutory language in section 965(n), and with existing rules on the allocation and apportionment of expenses under section 904, to the extent they defer deductions that would be taken against income other than the section 965(a) inclusion. In addition, the comment stated that the foreign tax credit proposed regulations are inconsistent with the operation of section 965 and section 904 to the extent they treat the section 965(a) inclusion net of the section 965(c) deduction, rather than the section 965(a) inclusion without reduction for the section 965(c) deduction, as the gross income in the statutory grouping for section 904 purposes. The comment also suggested that the exclusion of the section 965(c) deductions from the deferred amount was inappropriate. The comment further stated that, if the regulations are finalized as proposed, taxpayers should be allowed to revoke the section 965(n) election. Finally, the comment recommended that proposed § 1.965–7(e)(1)(iv)(B) be revised to refer to allocation of all deductions (other than the net operating loss carryover or carryback to that year that is not allowed by reason of the section 965(n) election), rather than refer solely to allocation of deductions that would have been allowed for the year but for the section 965(n) election.

The final regulations include the ordering rules from the foreign tax credit proposed regulations, with some modifications to take into account the comments. In general, the Treasury Department and the IRS have determined that these rules are consistent with sections 965(n) and 904. Section 965(n) does not modify the generally applicable rules concerning the allocation and apportionment of expenses for section 904 purposes, nor does it provide an ordering rule for determining which deductions create or increase the amount of a current year net operating loss by reason of the section 965(n) election. Section 965(n) applies solely to determine the amount of the net operating loss for the election year and the amount of net operating loss carryover or carryback to that year. It does not require or permit the reallocation of deductions that are allocated and apportioned to the separate category containing the section 965(a) inclusion and associated section 78 dividends, regardless of whether any deductions are deferred by reason of the section 965(n) election. For example, if a taxpayer with only U.S. source and general category income has U.S. source taxable income exceeding the amount of deductions allocated and apportioned to foreign source general category income that includes a section 965(a) inclusion and associated section 78 dividends, a section 965(n) election would not result in a deferred amount and would not affect the calculation of the taxpayer's foreign tax credit limitation. Similarly, a taxpayer with U.S. source income in excess of its net operating loss carryover would have no basis to prevent general category income that includes a section 965(a) inclusion from being reduced by a general category section 172 deduction. A pro rata convention for determining the source and separate category of the deferred amount is more neutral and more consistent with the operation of the expense allocation rules in the absence of a deferred amount than a rule stacking the deferred amount first out of deductions that would reduce the section 965(a) inclusion and associated section 78 dividends. Therefore, the final regulations include the proposed rules applying the existing rules on the allocation and apportionment of expenses for purposes of section 904, and determining the source and separate category of the deferred amount on a pro rata basis. However, in response to the comment regarding the exclusion of the section 965(c) deductions from the deferred amount, the Treasury Department and the IRS agree that section 965(n) does not provide that the deferred amount includes or excludes specific deductions for purposes of section 904. Therefore, the final regulations include the section 965(c) deduction in determining the source and separate category of the deferred amount. See § 1.965–7(e)(1)(iv)(B)(*2*).

Separately, the Treasury Department and the IRS have determined that nothing in proposed § 1.965–7(e)(1)(iv)(B)(*2*) suggests that the allocation and apportionment of expenses is based on the section 965(a) inclusion net of the section 965(c) deduction, as opposed to the section 965(a) inclusion not reduced by the section 965(c) deduction. All expenses are allocated and apportioned according to the regulations under §§ 1.861–8 through 1.861–17. See proposed § 1.965–7(e)(1)(iv)(B)(*1*). The section 965(c) deduction is definitely related to the section 965(a) inclusion. See § 1.861–8(b). Other deductions are allocated and apportioned according to the regulations under §§ 1.861–8 through 1.861–17. For example, a deduction that is not definitely related to any gross income must be ratably apportioned between the statutory grouping of gross income and the residual grouping. The gross income utilized for such ratable apportionment is not reduced by the section 965(c) deduction. See § 1.861–8(c)(3).

The final regulations also adopt the comment's alternative suggestion to allow taxpayers a limited period to revoke a prior election under section 965(n) in order to account for the fact that the foreign tax credit proposed regulations were issued after some taxpayers were required to make the election under section 965(n). See § 1.965–7(e)(2)(ii)(B). For administrability reasons, in order to minimize the number of amended returns that a taxpayer may need to file in connection with section 965, the deadline for a revocation is based on the extended due dates for the taxpayer's returns. In addition, in response to the comment's request for clarification, proposed § 1.965–7(e)(1)(iv)(B)(*1*) is revised in the final regulation to clarify that it refers to all deductions (other than the net operating loss carryover or carryback to that year that is not allowed by reason of the section 965(n) election).

Another comment requested guidance providing that a taxpayer that had made a timely election under section 965(n) be treated as having made a timely election under section 965(h). Under section 965(h), a taxpayer may elect to pay its section 965(h) net tax liability in eight installments. Section 965(h)(5) provides that the election must be made no later than the due date for the tax return for the inclusion year and in the manner prescribed by the Secretary. Section 1.965–7(b)(2)(ii) provides that relief is not available under § 301.9100–

2 or § 301.9100–3 to file a late election. The comment explained that, as a result of the ordering rules in the foreign tax credit proposed regulations, some taxpayers will have a section 965(h) net tax liability in excess of amounts paid with respect to the tax year ending December 31, 2017. Those taxpayers did not make a timely election under section 965(h) because they may have determined that they did not have a section 965(h) net tax liability in excess of amounts paid because they calculated their section 904 foreign tax credit limitation in the inclusion year without allocating or apportioning any expenses to reduce the amount described in § 1.965–7(e)(1)(ii), which is inconsistent with the rules in the foreign tax credit proposed regulations.

The final regulations do not adopt this recommendation. The statute requires that the election must be made not later than the due date for the tax return for the inclusion year. See section 965(h)(5); see also TD 9846, 84 FR 1838, 1868 (February 5, 2019) (denying a similar request to permit late elections under section 965). Moreover, regulations deeming an election to be made by default would not be appropriate, because the statute requires an affirmative election. Cf. 83 FR 39514, 39533–39534 (August 9, 2018) (denying a similar request to provide for default section 965(h) elections). For these reasons, these regulations do not treat a taxpayer that has made a timely election under section 965(n) as having made a timely election under section 965(h).

Finally, the final regulations include two new examples to illustrate the application of § 1.965–7(e)(1). See § 1.965–7(e)(3).

Consistent with § 1.965–9, the final regulations in § 1.965–7(e) apply to the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to a U.S. person, beginning the taxable year in which or with which such taxable year of the foreign corporation ends.

XI. Comments and Revisions Regarding Applicability Dates

A. Proposed Regulations

The proposed regulations provide that § 1.951–1(e), other than paragraph (e)(1)(ii)(B) (regarding the determination of allocable E&P), applies to taxable years of U.S. shareholders ending on or after October 3, 2018. Comments requested certain changes and guidance related to the applicability date of proposed § 1.951–1(e)(6), the substance of which is discussed more fully in part II.B of this Summary of Comments and Explanation of Revisions section. Comments recommended that the pro rata share anti-abuse rule in proposed § 1.951–1(e)(6) not be applied to transactions or arrangements entered into before the general applicability date of § 1.951–1(e). Under this recommendation, transactions or arrangements entered into before the general applicability date of § 1.951–1(e)(6), regardless of whether they would be subject to the pro rata share anti-abuse rule, would be given effect for purposes of determining a U.S. shareholder's pro rata share of subpart F income and tested items for taxable years ending after the general applicability date. The Treasury Department and the IRS do not adopt this recommendation because it would have the effect of grandfathering existing transactions or arrangements entered into with a principal purpose of avoiding Federal income taxation.

A comment also recommended that taxpayers be permitted, but not required, to apply the facts and circumstances method under § 1.951–1(e)(3), the substance of which is discussed more fully in part II.C of this Summary of Comments and Explanation of Revisions section, to taxable years ending on or after December 31, 2017, and before October 3, 2018. The comment stated that, under section 965, a U.S. shareholder with a taxable year ending on December 31 may be required to determine its pro rata share of the increase to subpart F income of its foreign subsidiaries in both its 2017 taxable year with respect to foreign subsidiaries with a taxable year ending December 31, and its 2018 taxable year with respect to foreign subsidiaries with a taxable year ending November 30. Accordingly, given the applicability date in the proposed regulations, for purposes of determining such U.S. shareholder's inclusion under section 965, the U.S. shareholder could be required to apply, with respect to its calendar year foreign subsidiaries, the fair market value method under the existing regulations for classes of stock with discretionary distribution rights, but then apply, with respect to its fiscal year foreign subsidiaries, the facts and circumstances method for stock with the same characteristics. The comment suggested that allowing U.S. shareholders to rely on the facts and circumstances method for taxable years ending on or after December 31, 2017, and before October 3, 2018, would enable taxpayers to apply a uniform method for allocating the section 965(a) earnings amounts of all relevant foreign subsidiaries among or between U.S. shareholders, would provide more certainty, would be less administratively burdensome, and would not result in improper allocations of subpart F income because the method is consistent with each shareholder's economic rights and interests.

The Treasury Department and the IRS have determined that it would be inappropriate to permit U.S. shareholders the ability to choose whether to rely on the new allocation rules under § 1.951–1(e)(3) for taxable years of foreign corporations that end within the U.S. shareholder's taxable year ending before October 3, 2018, the general applicability date of § 1.951–1(e). See § 1.951–1(i). Rather than simplifying the process of determining their pro rata shares with respect to their calendar year foreign subsidiaries, the proposal would incentivize taxpayers to invest additional time and resources to determine their U.S. tax liability under both sets of pro rata share rules in order to determine the rules that result in the least amount of U.S. tax liability. In addition, because most tax returns of U.S. shareholders that include income from a foreign subsidiary with a taxable year ending on December 31, 2017, by reason of section 965 have already been filed, the proposal would increase the number of amended returns filed for those taxable years, thus creating additional compliance burdens for taxpayers and administrative costs for the government. Accordingly, the final regulations do not adopt this proposal.

There were no comments related to the applicability dates of other provisions of the proposed regulations. The final regulations adopt the applicability dates of the proposed regulations without substantial changes. Therefore, consistent with the applicability date of section 951A, §§ 1.951A–1 through 1.951A–6, including §§ 1.951A–2(c)(5) and –3(h)(2), apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end. The applicability dates with respect to the rules in § 1.951–1 are as follows. Paragraphs (a), (b)(1)(ii), (b)(2), (e)(1)(ii)(B), and (g)(1) apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end. Paragraph (e), except for paragraph (e)(1)(ii)(B), applies to taxable years of U.S. shareholders ending on or after October 3, 2018. Paragraph (h) applies to taxable years of domestic partnerships ending on or after

May 14, 2010. Sections 1.6038–2(a) and § 1.6038–5 apply to taxable years of foreign corporations beginning on or after October 3, 2018.

These final regulations modify applicability dates in the proposed regulations related to consolidated groups. Proposed § 1.1502–51 applies to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end. The Treasury Department and the IRS have determined that for U.S. shareholders that are members of a consolidated group, the applicability date for § 1.1502–51 should be postponed to taxable years of such members for which the due date (without extensions) of the consolidated return is after the date on which these final regulations are published in the **Federal Register**. However, the final regulations provide that a consolidated group may apply the rules of § 1.1502–51 in their entirety to all of its members for all taxable years described in § 1.951A–7. See § 1.1502–51(g).

B. Foreign Tax Credit Proposed Regulations

No significant changes were made to the applicability dates of the portions of the final regulations that relate to rules that were in the foreign tax credit proposed regulations. Under § 1.965–9(a), the provisions of § 1.965–7 contained in this final regulation 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. In general, § 1.78–1 applies to taxable years of foreign corporations that begin after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end, and § 1.861–12(c) applies to taxable years that both begin after December 31, 2017, and end on or after December 4, 2018.

A special applicability date was provided in proposed § 1.861–12(k) in order to apply § 1.861–12(c)(2)(i)(B)(*1*)(*ii*) to the last taxable year of a foreign corporation beginning before January 1, 2018, since there may be an inclusion under section 965 for that taxable year. In the final regulations, this special applicability date is extended to § 1.861–12(c)(2)(i)(A) to accommodate the changes that were made to that rule to further implement the rule in § 1.861–12(c)(2)(i)(B)(*1*)(*ii*). A special applicability date is provided in § 1.78–1(c) in order to apply the second sentence of § 1.78–1(a) to section 78 dividends received after December 31, 2017, with respect to a taxable year of a foreign corporation beginning before January 1, 2018. See part X.A of this Summary of Comments and Explanation of Revisions section regarding comments received about the special applicability date in § 1.78–1(c).

XII. Comment Regarding Special Analyses

One comment asserted that in issuing the proposed regulations, the Treasury Department and the IRS did not comply with the Regulatory Flexibility Act (''RFA'') due to the number of small business entities impacted. The comment also stated that the Treasury Department and the IRS did not comply with the Paperwork Reduction Act (''PRA'') when they authorized the collection of information. Lastly, the comment claimed that the Treasury Department and the IRS did not comply with Executive Orders 12866 and 13563, as well as the Memorandum of Understanding, Review of Tax Regulations under Executive Order 12866, when they issued the proposed regulations.

The Treasury Department and the IRS complied with the applicable requirements under the RFA, the PRA, and Executive Orders 12866 and 13563 when issuing the proposed regulations. See 83 FR 51072, 51084 Special Analyses section. The comment's assertion regarding the number of small business entities impacted by the proposed regulations is addressed in part III of the Special Analyses section.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

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, of reducing costs, of harmonizing rules, and of promoting flexibility.

These final regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. OMB has designated this final regulation as economically significant under section 1(c) of the Memorandum of Agreement. Accordingly, the final regulations have been reviewed by OMB's Office of Information and Regulatory Affairs. For purposes of E.O. 13771 this rule is regulatory. For more detail on the economic analysis, please refer to the following analysis.

A. Need for the Final Regulations

The final regulations are needed to address remaining open questions regarding the application of section 951A and comments received on the proposed regulations. In addition, certain rules in the foreign tax credit proposed regulations need to be finalized to ensure that the applicability dates of these rules coincide with the applicability dates of the statutory provisions to which they relate.

B. Background

The Tax Cuts and Jobs Act (the Act) established a system under which certain earnings of a foreign corporation can be repatriated to a corporate U.S. shareholder without U.S. tax. See section 14101(a) of the Act and section 245A. However, Congress recognized that, without any base protection measures, this system, known as a participation exemption system, could incentivize taxpayers to allocate income—in particular, mobile income from intangible property—that would otherwise be subject to the full U.S. corporate tax rate to controlled foreign corporations (CFCs) operating in low- or zero-tax jurisdictions. See Senate Explanation at 365. Therefore, Congress enacted section 951A in order to subject intangible income earned by a CFC to U.S. tax on a current basis, similar to the treatment of a CFC's subpart F income under section 951(a)(1)(A). However, in order to not harm the competitive position of U.S. corporations relative to their foreign peers, the global intangible low-taxed income (GILTI) of a corporate U.S. shareholder is taxed at a reduced rate by reason of the deduction under section 250 (with the resulting U.S. tax further reduced by a portion of foreign tax credits under section 960(d)). Id. Also, due to the administrative difficulty in identifying income attributable to intangible assets, intangible income (and thus GILTI) is determined for purposes of section 951A based on a formulaic approach. Intangible income for this purpose is generally all net income (other than certain excluded items) less a 10-percent return (''normal return'') on certain tangible assets (''qualified business asset investment'' or ''QBAI''). Id. at 366.

The final regulations address open questions regarding the application of section 951A and comments received on the proposed regulations. In addition, certain rules in the foreign tax credit proposed regulations are being finalized in this Treasury decision to ensure that the applicability dates of these rules coincide with the applicability dates of the statutory provisions to which they relate. The final regulations retain the basic approach and structure of the proposed regulations and foreign tax credit proposed regulations, with certain revisions.

The final regulations relating to GILTI provide general rules and definitions, guidance on the computation of a GILTI inclusion amount, rules regarding the interaction of certain aspects of section 951A with other provisions, guidance for consolidated groups and their members and partnerships and their partners, information reporting requirements, and rules to prevent the avoidance of GILTI. The regulations under sections 78, 861, and 965 finalize certain discrete provisions included in the foreign tax credit proposed regulations that relate to section 965.

C. Economic Analysis

1. Baseline

The Treasury Department and the IRS have assessed the economic effects of the final regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these final regulations.

2. Summary of Economic Effects

To assess the economic effects of these final regulations, the Treasury Department and the IRS considered economic effects arising from three sorts of provisions of these final regulations. These are (i) effects arising from provisions that provide enhanced certainty and clarity; (ii) effects arising from provisions to prevent tax-avoidance behavior; and (iii) effects arising from other provisions.

These final regulations provide certainty and clarity to taxpayers regarding terms and calculations they are required to apply under the statute. Because a tax had not been imposed on GILTI before the enactment of section 951A and because the statute is silent on certain aspects of definitions and calculations, taxpayers can particularly benefit from enhanced specificity regarding the relevant terms and necessary calculations they are required to apply under the statute. In the absence of this enhanced specificity, similarly situated taxpayers might interpret the statutory rules of section 951A differently, potentially resulting in inefficient patterns of economic activity or litigation in the event that a taxpayer's interpretation of the statute differs from that of the IRS. For example, different taxpayers might pursue income-generating activities based on different assumptions about whether that income will be counted as GILTI, and some taxpayers may forego specific investments that other taxpayers deem worthwhile based on different interpretations of the tax consequences alone. If the foregone activities would have been more profitable than those that were undertaken, U.S. economic performance would be negatively affected. The guidance provided in these regulations helps to ensure that taxpayers face more uniform incentives when making economic decisions, thereby improving U.S. economic performance. This guidance also helps to ensure that taxpayers make tax-related decisions under interpretations that are more consistent with the intent and purpose of the statute.

The Treasury Department and the IRS have not undertaken quantitative estimates of these effects. Any such quantitative estimates would be highly uncertain because the mix of interpretations that taxpayers might have pursued in the absence of this guidance and the mix of economic behaviors stemming from those interpretations are not readily known. More importantly, the relationship between a taxpayer's interpretation absent this guidance and the taxpayer's GILTI inclusion under the final regulations, a difference that is key to understanding the economic effects of the final regulations, is also not readily known.

For example, the final regulations include provisions to address the treatment of domestic partnerships and partners for purposes of section 951A and the section 951A regulations. Part I.C.3.a.i of this Special Analyses section lays out some of the possible interpretations that taxpayers might have adopted in calculating their GILTI inclusion with respect to CFCs owned by a domestic partnership in the absence of specific guidance. Because GILTI and the GILTI partnership provisions are new and because taxpayers' ownership shares of CFCs both through and separate from domestic partnerships are not readily available, the Treasury Department and the IRS cannot readily predict the difference in taxpayers' marginal GILTI inclusion between any given interpretation under the baseline and the final regulation. Thus it is not feasible for the Treasury Department and the IRS to quantify with any reasonable precision the difference in economic activity that might be undertaken by those taxpayers based on those marginal GILTI inclusions.[5] As data become available, the Treasury Department and the IRS will observe and monitor partner GILTI inclusions resulting from the statute and these supporting regulations.

With these considerations in mind, part I.C.3.a.i of this Special Analyses section explains the rationale behind the final regulations' approach to the treatment of partnerships and provides a qualitative assessment of the alternatives considered.

The final regulations also include provisions designed to curtail improper tax avoidance behavior. In the absence of these provisions, taxpayers could potentially reduce their GILTI by holding specified tangible property over an additional quarter close. See part I.C.3.d.i of this Special Analyses section. This activity is economically inefficient to the extent that the taxpayer acquires the property or holds property longer than the taxpayer would have held it in the absence of this tax-avoidance opportunity. The cost of this inefficiency (relative to the final regulations, which reduce the incentives for such behavior) is roughly proportional to the amount of specified tangible property held longer than optimal, multiplied by the length of the extra holding period, multiplied by the difference between the use value of this property to the taxpayer and its alternative use. The benefit of the final regulations is the reduction in this inefficiency.

The Treasury Department and the IRS have not undertaken a quantitative estimate of this benefit but expect it to be small because the difference between the use value to the taxpayer of property held for tax avoidance purposes and its alternative use is not likely to be large.[6] The Treasury Department and the IRS do not have readily available data on the amount of specified tangible property that might otherwise be used for tax avoidance purposes, the taxpayers who might hold this property, or the value differential of the property that would be held for tax avoidance purposes.

While it is not currently feasible for the Treasury Department and the IRS to

[5] Part I.C.3.a.ii of this Special Analyses section provides further discussion of data limitations in identifying the set of affected taxpayers.

[6] This claim refers solely to the economic benefit arising from this provision and does not refer to any estimate of the tax revenue effects of the provision.

quantify these effects, part I.C.3.c.i of these Special Analyses explains the rationale behind the final regulations' approach to the temporary holding of specified tangible property and provides a qualitative assessment of the alternatives considered.

This economic analysis further considered the economic effects of all other provisions in the final regulations. For example, the statute dictates that, for the purpose of calculating QBAI, taxpayers should depreciate assets placed in service before the enactment of section 951A using the alternative depreciation system (ADS) but grants authority to the Secretary under 951A(d)(4) to issue regulations to prevent the avoidance of the purposes of section 951A(d). By providing taxpayers an alternative to ADS, the final regulations reduce taxpayers' compliance burden and, by effecting changes in QBAI, change some taxpayers' marginal GILTI inclusion, an effect that may result in changes in economic activity and the location of such activity. Furthermore, the final regulations determine partnership QBAI by reference to the depreciation deductions generated by partnership specified tangible property because a CFC partner's share of these depreciation deductions can be used as a reliable proxy for determining a CFC's distributive share of tested income produced with respect to such property. The use of the proxy simplifies, and reduces the uncertainty in the computation for taxpayers, thereby reducing taxpayer burden relative to the baseline.

The netting approach for specified interest expense adopted in these final regulations also reduces uncertainty and the complexity involved in characterizing income and matching expense to income which would be required under a tracing approach. Therefore, the netting approach simplifies the taxpayers' computations and reduces their compliance costs.

With respect to partially depreciable assets, such as platinum catalysts, the final regulations treat a portion of the adjusted basis of the asset as giving rise to QBAI, rather than the asset's entire adjusted basis. The Treasury Department and the IRS determined that applying the same standard for determining whether property qualifies as QBAI and whether the property is depreciable is simpler for tax administration and compliance purposes than having two standards. Moreover, since QBAI generally is determined for purposes of FDII under section 951A(d), it is expected that the final rule will incentivize the use of partially depreciable assets within the United States versus without relative to an alternative of treating the entire adjusted basis of the asset as QBAI.

Because GILTI is new and because tax filings do not report taxpayers' accounting methods for assets placed in service before the enactment of section 951A, the Treasury Department and the IRS do not have readily available data to project which taxpayers are affected by these regulations or to project their marginal GILTI inclusion for current income-generating activities. Thus it is not currently feasible for the Treasury Department and the IRS to estimate the economic effects of the final regulations relative to the baseline.

With these considerations in mind, part I.C.3 of these Special Analyses explains the rationale behind the final regulations and provides a qualitative assessment of the alternatives considered.

3. Economic Effects of Provisions Substantially Revised From the Proposed Regulations

a. Treatment of Domestic Partnerships Under Section 951A

i. Background and Alternatives Considered

Section 951A does not contain any specific rules on the treatment of a domestic partnership and their partners that directly or indirectly own stock of CFCs. The proposed regulations contain a rule that requires a domestic partnership that is a U.S. shareholder of a CFC to determine its GILTI inclusion amount. The proposed regulations then provide that partners of the partnership that are not separately U.S. shareholders of the CFC take into account their distributive share of the partnership's GILTI inclusion amount. In contrast, partners that are U.S. shareholders of the CFC are required to take into account their proportionate share of the partnership's pro rata share of tested items of the CFC for purposes of determining the U.S. shareholder's own GILTI inclusion amount. The proposed regulations thus adopt a hybrid approach under which the domestic partnership is treated as an entity with respect to partners that are not themselves U.S. shareholders of a CFC but as an aggregate with respect to partners that are themselves U.S. shareholders of the CFC. While the hybrid approach is consistent with the framework of section 951A, a number of comments pointed to administrative and procedural complexities with the approach of the proposed regulations. Thus the Treasury Department and the IRS re-evaluated this approach for the final regulations.

The Treasury Department and the IRS considered a number of alternatives for addressing the treatment of domestic partnerships in the final regulations. These alternatives were: (i) The hybrid approach set forth in the proposed regulations; (ii) an approach under which the domestic partnership would be treated as an entity for all purposes of section 951A; and (iii) an approach under which a domestic partnership would be treated as an entity for purposes of determining whether any U.S. person is a U.S. shareholder and any foreign corporation is a CFC, but as an aggregate for purposes of determining whether, and to what extent, any U.S. person has a GILTI inclusion. A fourth option, to apply a pure aggregate approach under which a domestic partnership would be treated as an aggregate of all of its partners for all purposes of section 951A, was rejected because the Treasury Department and the IRS determined that it is inconsistent with other sections of the Code.

The first option was to finalize the hybrid approach set forth in the proposed regulations. While the hybrid approach is consistent with the framework of section 951A, a number of comments pointed to administrative and procedural complexities with the approach of the proposed regulations, including coordination with partners' capital accounts and basis adjustments with respect to partnership interests and CFCs. In particular, comments noted the uncertainty under the hybrid approach whether, and to what extent, a U.S. shareholder partner's pro rata share of tested income or tested loss of a partnership CFC should increase or decrease the partner's capital account with respect to the partnership or its basis in the partnership interest. Comments also noted that the hybrid approach can result in varied GILTI computations for partners depending on whether the partner is a U.S. shareholder of a CFC owned by a domestic partnership. Finally, comments noted that the hybrid approach would result in disparate treatment between partners that own stock in a CFC through a domestic partnership and partners that own stock in a CFC through a foreign partnership. These latter outcomes have clearly detrimental economic effects because they do not treat similar taxpayers in a similar fashion.

The second option was to adopt a pure entity approach, meaning that the domestic partnership would determine its own GILTI inclusion amount and each partner would take into account its distributive share of the partnership's GILTI inclusion amount. This approach is consistent with the historical treatment of domestic partnerships for purposes of subpart F. However, this approach is inconsistent with the policies underlying the GILTI provisions and interrelated rules, such as the deduction under section 250 and certain foreign tax credits for GILTI that are determined at the partner level (rather than the partnership level). Further, under this approach, many taxpayers would be compelled to reorganize their ownership structure—for instance, by eliminating their ownership of CFCs through domestic partnerships—to obtain full aggregation of tested items of their CFCs as envisioned by Congress. Yet other taxpayers would be incentivized to reorganize in an attempt to avoid full aggregation so as to reduce their inclusion below an amount that accurately reflects their GILTI. For instance, taxpayers could separate tested items that generally decrease a U.S. shareholder's GILTI (for example, qualified business asset investment) from certain tested items that reduce the benefit of such tested items (for example, specified interest expense), thus minimizing the U.S. shareholder's aggregate GILTI inclusion amount. Potentially reorganizing to realize a specific GILTI treatment suggests that tax instead of market signals are determining business structures. This can lead to higher compliance costs and inappropriate investment.

The third option, which is adopted in the final regulations, is to apply an approach that treats a domestic partnership as an entity for purposes of determining whether any U.S. person is a U.S. shareholder and whether any foreign corporation is a CFC, but treats a domestic partnership as an aggregate for purposes of determining whether, and to what extent, a partner of a domestic partnership has a GILTI inclusion. Such an approach is consistent with the framework of section 951A and gives effect to the relevant statutory language that treats a domestic partnership as a U.S. shareholder and as owning stock for purposes of determining U.S. shareholder and CFC status. Moreover, this approach eliminates the administrative complexity identified by comments with respect to the hybrid approach in the proposed regulations by calculating a U.S. shareholder partner's GILTI inclusion amount solely at the partner level.

The final regulations treat a domestic partnership as an aggregate by providing that, in general, for purposes of section 951A and the section 951A regulations, a domestic partnership is treated in the same manner as a foreign partnership. The final regulations employ the existing framework for foreign partnerships (which are generally treated as an aggregate of their partners for purposes of subpart F), rather than creating new aggregation rules specifically for the treatment of domestic partnerships, because such framework is relatively well-developed and understood. Using the same treatment for domestic and foreign partnerships is more likely to result in market forces determining organization form instead of tax law. In addition, by eliminating the complexity and traps for the unwary associated with the hybrid and entity approaches, respectively, the chosen approach reduces compliance costs relative to the alternatives.

ii. Affected Taxpayers

The Treasury Department and the IRS estimate that there were approximately 7,000 U.S. partnerships with CFCs that e-filed at least one Form 5471 as Category 4 or 5 filers in 2015 and 2016.[7] The identified partnerships had approximately 2 million partners, as indicated by the number of Schedules K–1 filed by the partnerships. This number includes both domestic and foreign partners, so it substantially overstates the number of partners that would actually be affected by the final regulations by including foreign partners.[8] The final regulations affect domestic partners that are U.S. shareholders of a CFC owned by the domestic partnership because such partners will determine their GILTI inclusion amount by reference to their pro rata shares of tested items of CFCs owned by the partnership. Domestic partners that are not U.S. shareholders of a CFC owned by the domestic partnership will neither determine their own GILTI inclusion amount by reference to their pro rata shares of tested items of CFCs owned by the partnership nor include in their income a distributive share of the partnership's GILTI inclusion amount. This latter group is likely to be a substantial portion of domestic partners given the high number of partners per partnership and have lower compliance costs as a result of the final regulations. Because it is not possible to readily identify these types of partners based on available data, this number is an upper bound of partners who would have been affected by this rule had this rule been in effect in 2015 or 2016.

b. Rule for Transfers During the Disqualified Period

i. Background and Alternatives Considered

The proposed regulations include a rule in § 1.951A–2(c)(5) to address transactions intended to reduce a GILTI inclusion amount as a result of a stepped-up basis in CFC assets attributable to related party transfers that occur during the disqualified period. The disqualified period of a CFC is the period between December 31, 2017, which is the last earnings and profits (E&P) measurement date under section 965, and the beginning of the CFC's first taxable year that begins after December 31, 2017, which is the first taxable year with respect to which section 951A is effective. A taxpayer that caused a CFC to sell its assets to a related party during the disqualified period would not be subject to taxation on the income or earnings from such sales under either section 965 (because it was after the final E&P measurement date) or section 951A (because it was before its effective date). However, absent a special rule, in subsequent years, the transaction would reduce a U.S. shareholder's GILTI, by either reducing the transferee CFC's tested income (or increase its tested loss) through the depreciation or amortization attributable to the ''cost-free'' basis (disqualified basis) in assets created by reason of such related party transfer. Accordingly, the rule in the proposed regulations prevents the benefits of the disqualified basis by disallowing any deduction or loss attributable to the disqualified basis for purposes of determining tested income or tested loss.

Because the rule in proposed § 1.951A–2(c)(5) only disallows the stepped-up basis created by reason of a disqualified transfer for purposes of determining a CFC's tested income and tested loss, under the proposed regulations, a taxpayer would have to keep track of both a CFC's disqualified

[7] Data are from IRS's Research, Applied Analytics, and Statistics division based on data available in the Compliance Data Warehouse. Category 4 filer includes a U.S. person who had control of a foreign corporation during the annual accounting period of the foreign corporation. Category 5 includes a U.S. shareholder who owns stock in a foreign corporation that is a CFC and who owned that stock on the last day in the tax year of the foreign corporation in that year in which it was a CFC. For full definitions, see *https://www.irs.gov/pub/irs-pdf/i5471.pdf.*

[8] This analysis is based on the tax data readily available to the Treasury Department at this time. Some variables may be available on tax forms that are not available for statistical purposes. Moreover, with new tax provisions, such as section 951A, relevant data may not be available for a number of years for statistical purposes.

basis in an asset for purposes of section 951A and the CFC's adjusted basis in the asset for all other purposes of the Code. In addition, if the disqualified basis was not allowed for purposes of determining tested income and tested loss, a comment noted that it would be unfair for the basis to still be taken into account for purposes of section 901(m), which disallows foreign tax credits for foreign income not subject to U.S. tax by reason of certain basis differences that arise by reason of covered asset acquisitions. A transfer subject to the rule (a disqualified transfer) can also be a covered asset acquisition, and therefore section 901(m) and proposed § 1.951A–2(c)(5) could apply concurrently by reason of the same transaction.

The Treasury Department and the IRS considered three options to address the treatment of disqualified basis. These options were: (i) Adopt the proposed regulations without change; (ii) revise the regulations to provide that disqualified basis is also not taken into account for purposes of certain other provisions (in addition to section 951A) to ensure that the rule only prevents the GILTI benefits that taxpayers were trying to achieve; or (iii) allow taxpayers to make an election that would disregard the disqualified basis for all purposes of the Code.

The first option was to finalize without change the rule contained in the proposed regulations. On the one hand, this approach could be viewed as simple and targeted, because this rule would only disregard disqualified basis for purposes of determining GILTI, and the transactions subject to the rule were primarily intended to reduce GILTI. On the other hand, this rule could be considered unfair in certain cases because the concurrent application of both the rule and section 901(m), without a means for avoiding such concurrent application, could be viewed as unduly punitive to taxpayers that engaged in such transactions. In addition, this option would require taxpayers to track and maintain separate bases in the property for purposes of GILTI and all other purposes of the Code.

The second option was to not take into account disqualified basis for certain other provisions (in addition to section 951A) to ensure that the rule only prevented the GILTI benefits that taxpayers were trying to achieve. Such an approach would result in additional and considerable complexity because numerous other provisions would have to be considered. In addition, simply not taking into account the basis for purposes of these other provisions may not alone provide appropriate results, without taking into account the policies underlying the specific provisions. Such particular policy considerations could require additional special and detailed rules or modifications to the general disallowance rules. In addition, it would be difficult to assess the effect that the disqualified basis would have on other provisions of the Code, or how it could affect different taxpayers with different tax postures.

The third option, which is adopted in the final regulations, is to allow taxpayers to make an election that eliminates disqualified basis in property by reducing a commensurate amount of adjusted basis in the property for all purposes of the Code. Although this option was not as targeted as the second option, it was the simplest of the three options because it results in the property only having a single tax basis for all purposes of the Code such that different bases need not be tracked for different purposes. In addition, it does not result in additional complex rules, as would be required in the second option, because it simply applies for all purposes; once the basis is reduced, the Code simply applies to the property as if the basis were never stepped up. Finally, this approach permits taxpayers to decide whether the benefit of the additional adjusted basis associated with the disqualified basis outweighs the cost of complexity in applying the rule or, alternatively, whether the value of simplicity outweighs the benefit of the additional adjusted basis. By allowing this flexibility and adopting a single adjusted basis for all purposes of the Code, the adopted approach reduces complexity and compliance costs, relative to both alternatives considered.

ii. Affected Taxpayers

The final regulations apply to any deduction or loss attributable to disqualified basis. Disqualified basis is created by reason of a disqualified transfer, which is defined as a transfer of property by a fiscal year CFC during the disqualified period to a related person in which gain was recognized, in whole or in part. A fiscal year CFC's disqualified period is the period that begins on January 1, 2018, and ends as of the close of the CFC's last taxable year that is not a CFC inclusion year. The taxpayer affected is a U.S. shareholder of any CFC that holds property with disqualified basis. In general these final regulations affect U.S. shareholders with at least one fiscal year CFC that has at least one other CFC where the fiscal-year CFC has property with unrealized gains that can be transferred during the disqualified period.

The Treasury Department and the IRS do not have data identifying CFCs that engaged in transactions with related CFCs during the period after December 31, 2017 but before the effective date of section 951A. As an upper-bound estimate, there are approximately 3,000 U.S. shareholders of fiscal year CFCs with at least one related CFC that could potentially engage in a transaction.[9] This is an overestimate since only those fiscal year CFCs with unrealized gains could take advantage of this disqualified period. The Treasury Department does not have data readily available to estimate these unrealized gains.

c. Transition Rule To Determine Normal Return Using the Alternative Depreciation System

i. Background and Alternatives Considered

A U.S. shareholder's GILTI inclusion amount is based on a formulaic approach under which a 10-percent return attributed to certain tangible assets (QBAI) is computed and then each dollar of certain income above such ''normal return'' is effectively treated as intangible income. Under the statute, QBAI is measured by determining the adjusted basis in certain tangible property using the alternative depreciation system (ADS). Section 951A(d)(4) directs the Secretary to issue regulations or other guidance that is appropriate to prevent the avoidance of the purposes of section 951A(d), including with respect to the treatment of temporarily held or transferred property.

The proposed regulations require the adjusted basis of all specified tangible property to be determined using ADS under section 168(g) for purposes of determining the QBAI of a CFC. In general, the Code requires that tangible property used by a CFC outside the United States must be depreciated using ADS. Accordingly, in most instances, the depreciation method required under the proposed regulations will correspond to the CFC's depreciation method used for computing income. However, under existing regulations under section 952, a CFC may compute its income and E&P using the depreciation method used in keeping its accounting books and records or a method conforming to United States generally accepted accounting principles (''non-ADS depreciation method'') if the differences between

[9] Based on IRS Statistics of Income 2014 study file of C corporations with Form 5471 category 4 filers. Includes full and part year returns.

ADS and the non-ADS depreciation method are immaterial. In the case of a CFC that is permitted to use a non-ADS depreciation method, the proposed regulations would nonetheless require the CFC to determine its adjusted basis in its assets for purposes of calculating QBAI based on ADS. In particular, with respect to assets placed in service before the enactment of section 951A, the proposed regulations would require the CFC to determine the date the assets were placed in service, the ADS class life, and other information about the asset to correctly apply ADS as if the asset had been depreciated using ADS since the date the asset was placed in service. Several comments noted that this requirement could be onerous for specified tangible property acquired before the enactment of section 951A and requested relief from this requirement for such property.

Although section 951A(d)(3) specifically requires use of ADS to determine the adjusted basis in specified tangible property, section 951A(d)(4) authorizes the Secretary to issue regulations that are appropriate for purposes of determining QBAI. Thus, the Treasury Department and the IRS considered three options to address the use of ADS for specified tangible property placed in service prior to the enactment of section 951A. These options were: (i) Require the use of ADS for all property placed in service before the enactment of section 951A, consistent with the proposed regulations; (ii) require ADS for determining the adjusted basis of specified tangible property, but on a ''cut-off basis''; or (iii) allow the CFC to continue using its non-ADS depreciation method for property placed in service prior to the enactment of section 951A, and to include a special rule that requires depreciation of the ''salvage value.'' These options apply only where the CFC is not required to use ADS to compute its income under § 1.952–2 or E&P under § 1.964–1 with respect to such property.

The first option considered was to require the use of ADS for all property placed in service before the enactment of section 951A, consistent with the proposed regulations. However, Treasury and the IRS recognize that re-determining the adjusted basis in assets using a new depreciation method could be a difficult, uncertain, and time-consuming process for CFCs that have numerous items of specified tangible property acquired before the enactment of section 951A, in part, because the CFCs may not have kept the records necessary to make the determinations. Notably as described above, CFCs are permitted to compute their income and E&P using their non-ADS depreciation method for specified tangible property used outside the United States when the differences between the non-ADS depreciation method and ADS are immaterial. Therefore, the Treasury Department and the IRS determined that some relief from the administrative burden of re-determining the adjusted basis of each property placed in service before December 22, 2017, should be available to CFCs that are not required to use ADS for computing income and E&P. Such relief will alleviate this administrative burden, but will not impact taxpayer incentives or cost of capital, because it pertains only to property already placed in service.

The second option considered seeks to relieve burden by requiring ADS for determining the adjusted basis in specified tangible property, but on a ''cut-off basis.'' Under this option, the CFC would apply ADS to the adjusted basis determined using its non-ADS depreciation method as of the beginning of the first taxable year subject to section 951A. This option eliminates the need to re-determine the adjusted basis in the property as if ADS had been used since the property was placed in service. This approach could be implemented by applying ADS for the remaining ADS class life of the property or by treating the property as newly placed in service and applying the full ADS class life to the property. Each of those options would still require the CFC to determine when the property was placed in service and its ADS class life. In addition, applying ADS for the remaining ADS class life of the property would also require special rules for situations in which the property would have been fully depreciated under ADS before the first taxable year subject to section 951A, and applying ADS to the property based on the full ADS class life of the property would extend the period that the property is taken into account in the computation of QBAI. The Treasury Department and the IRS concluded that applying ADS on a cut-off basis under either approach did not significantly reduce the administrative burden of computing QBAI with respect to property placed in service prior to the enactment of section 951A.

The third option considered was to allow the CFC to elect to use its non-ADS depreciation method for property acquired prior to the enactment of section 951A, and to include a special rule that requires depreciation of the ''salvage value'' (in other words, the portion of the basis of property that would not be fully depreciated under the non-ADS depreciation method). The special rule is required because otherwise the salvage value would be included in the CFC's QBAI until the CFC disposed of the asset. This option was the least administratively burdensome, and the least likely to result in controversy between taxpayers and the IRS. It reduces compliance costs relative to the two alternatives by eliminating the need to redetermine the adjusted basis, class life and date placed in service of property for which good records may not exist. As noted above, it does not impact taxpayers' incentives or cost of capital, because it applies to property already placed in service. Further, because relief is provided in instances in which the difference between ADS and a non-ADS depreciation method is immaterial, it is likely to result in only minimal differences in depreciation deductions and QBAI.[10] Small changes in the QBAI have an even more muted impact on the determination of GILTI, because net DTIR, a component of the GILTI calculation, is only 10 percent of QBAI. Therefore, the impact of using a non-ADS depreciation method versus ADS for property placed in service before the enactment of section 951A is minimal. Accordingly, this is the option adopted in the final regulations.

ii. Affected Taxpayers

The population of taxpayers potentially affected by this aspect of these final regulations are the U.S. shareholders of CFCs that are not required to use ADS when computing E&P, subpart F income, and tested income or tested loss, because the differences in the tax liability of such U.S. shareholders resulting from the use of the CFCs' non-ADS depreciation method are immaterial relative to the use of ADS. Only those taxpayers whose CFCs use a non-ADS depreciation method for property placed in service before December 22, 2017 instead of ADS when computing E&P would be affected by these final regulations.

The Treasury Department and the IRS have previously projected that between 25,000 and 35,000 direct shareholders of CFCs would be potentially subject to GILTI and thus could be affected by this rule. This is an upper-bound estimate of taxpayers affected because it is not limited to those with CFCs that are permitted to use a non-ADS depreciation method with respect to property placed in service before the

[10] Treasury Depreciation Model tabulations of depreciation rates by 2 digit industry indicate that, on average, book depreciation and ADS depreciation for property in the manufacturing, mining, construction, utilities, and wholesale trade industries, are within 10 percent of one another.

enactment of section 951A. Precise identification of these taxpayers is not possible from readily available data because taxpayers do not report on Form 5471 what depreciation method they used in computing E&P.

d. Anti-Abuse Rule for Specified Tangible Property Held Temporarily

i. Background and Alternatives Considered

The proposed regulations include an anti-abuse rule to address property that is held temporarily over the quarter close of a CFC with a principal purpose of reducing the GILTI inclusion amount of a U.S. shareholder of the CFC. In the absence of an anti-abuse rule, taxpayers could reduce their GILTI inclusion by having a CFC temporarily hold property over an additional quarter close in order to artificially increase the U.S. shareholder's ''normal return'' on tangible assets. The anti-abuse rule for temporarily held property in the proposed regulations included a ''per se'' rule, which deemed property to be held temporarily and acquired with a principal purpose of reducing a GILTI inclusion amount if held by the CFC for less than a 12-month period. Comments asserted that the anti-abuse rule was overbroad. In particular, comments expressed concerns that the 12-month per se rule could affect transactions not motivated by tax avoidance, such as ordinary course transactions, and create burdens resulting from having to track how long the specified tangible property is held.

The Treasury Department and the IRS considered four options to address these concerns. These options were: (i) Adopt the proposed regulations without change; (ii) shorten the per se rule; (iii) eliminate the per se rule and rely on a principal purpose rule; or (iv) convert the per se rule into a rebuttable presumption, add a safe harbor, and clarify the scope of the rule.

The first option was to finalize without change the rule contained in the proposed regulations. This approach is a simple and administrable rule for the IRS and taxpayers because it would not consider the taxpayer's motivation for holding property for less than 12 months; however, it would not address the concern raised by comments that the rule can potentially apply to transactions that were not tax motivated and could therefore lead to a reduction in otherwise economically valuable transactions.

The second option was to shorten the 12-month per se rule to, for example, six months. While this option could significantly reduce the number of transactions subject to the rule relative to the first option, and would be administrable for the IRS and taxpayers (because a taxpayer's motivation for holding the property would not be relevant), it could still apply to transactions that were not tax-motivated. In addition, it could increase the burden on IRS to enforce compliance because it would require additional resources to assert the rule for property held longer than six months, even though the property may still be held temporarily for tax-motivated reasons.

The third option was to eliminate the per se rule and rely on a principal purpose rule. The rule would disregard the adjusted basis in property for purposes of computing QBAI if the property is held temporarily and is acquired with a principal purpose of reducing a GILTI inclusion amount. While this option would have the benefit of being flexible and, therefore, in theory could apply only to temporary holdings that were intended to reduce a U.S. shareholder's GILTI inclusion amount, it could create uncertainty for both taxpayers and the IRS. This uncertainty would result, in part, from the need to determine the taxpayer's principal purposes for each relevant acquisition and not having general guidelines for when property is considered to be held temporarily. It would also increase administrative and compliance costs for the IRS and taxpayers because there could be more disputes over the taxpayer's principal purpose and when a property is held temporarily.

The fourth option that was considered involved several components. First, this option would convert the per se rule to a rebuttable presumption. Under this rule, property would be presumed to be temporarily held and acquired with a principal purpose of reducing a GILTI inclusion amount if the property is held for less than twelve months. However, the presumption could be rebutted if, in general, the facts and circumstances clearly establish that the subsequent transfer of the property by the CFC was not contemplated when the property was acquired and that a principal purpose of the acquisition of the property was not to increase the normal return of a U.S. shareholder. This option also would add a second presumption that generally provides that property is presumed to not be subject to the rule if held for more than 36 months. In addition, this option would include a ''safe harbor'' that generally applies to transfers between CFCs that are owned in the same proportion by U.S. shareholders, have the same taxable years, and are all tested income CFCs. Finally, this option would include examples to indicate types of transactions that are, and are not, subject to the rule.

This fourth option more accurately identifies cases of potential abuse in comparison to the proposed regulations and the other options discussed in this part I.C.3.d.i of the Special Analyses section. Because it more accurately identifies cases of potential abuse, it yields more efficient outcomes because it does not penalize taxpayers with a legitimate business purpose for temporarily holding tangible property. This option provides flexibility to taxpayers holding property less than 12 months to either accept the presumption (and thus disregard the basis of the property under the anti-abuse rule) or, if appropriate, to choose to rebut the presumption by filing the appropriate statement. Taxpayers will have the flexibility to make the choice that appropriately balances the compliance costs related to rebutting the presumption with the tax cost of not rebutting the presumption depending on their particular circumstances. This option also relieves taxpayers of the burden of monitoring assets that are held more than 36 months, relative to the other options. In addition, the safe harbor would provide additional certainty to both taxpayers and the IRS, and eliminate any resulting compliance and administrative costs, because these transactions, which generally do not give rise to avoidance concerns, would be entirely excluded from the application of the rule. Although the compliance costs associated with a rebuttal based on facts and circumstances will likely be higher than under the first and second alternatives, those alternatives do not provide taxpayers with an opportunity to demonstrate the economic substance of the transaction, and the electivity of the rebuttal leaves taxpayers no worse off than under the first and second options. It is not clear whether the adopted approach has higher or lower compliance costs than the third approach, but Treasury and IRS determined the adopted approach to be superior for the reasons discussed above.

The Treasury and the IRS determined that these changes strike an appropriate balance between (i) mitigating compliance burdens relative to the proposed regulations and providing certainty and flexibility to taxpayers and (ii) identifying transactions that have the potential for abuse. Thus, this is the approach adopted in the final regulations.

ii. Affected Taxpayers

In principle, this aspect of the final regulations could apply to any tested income CFC that purchases tangible property and holds it temporarily. Therefore, this aspect of the regulations could affect any of the 25,000–35,000 persons with a potential GILTI inclusion and should be treated as an upper-bound estimate. In practice, however, it would only apply to U.S. shareholders of CFC that temporarily hold tangible property for tax minimization purposes, which would only be a small subset of sophisticated tax planners. The Treasury Department and the IRS do not have readily available data to enable estimating how many taxpayers could minimize tax in this way, nor which taxpayers would likely undertake such behavior in the absence of these regulations.

e. Application of Basis Adjustment for Purposes of Characterizing Certain Stock

i. Background and Alternatives Considered

Under the Code, certain expenses, including interest, must be allocated based on the adjusted basis of the assets held by the taxpayer. For purposes of allocating expenses to stock of certain foreign corporations held directly by a taxpayer, section 864(e)(4) generally requires that a taxpayer adjust the adjusted basis of the stock by the aggregate amount of E&P of the foreign corporation and its subsidiaries. The combination of the adjusted basis of the stock of the foreign corporation and the increase or decrease (if the foreign corporation and its subsidiaries have a deficit in E&P) in that amount by the E&P of the foreign corporation approximate the value of the stock of the foreign corporation for purposes of the expense allocation rules. 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. 946 (noting that ''the failure to consider earnings and profits caused significant distortion'' for purposes of expense allocation rules because the value of the earnings and profits is reflected in the fair market value of the stock).

Under section 965(b)(4)(B), if a taxpayer used a deficit in E&P to offset its inclusion under section 965(a), the deficit is eliminated by increasing the E&P of the foreign corporation with the deficit. However, because there is no offsetting reduction to the basis of the stock of the foreign corporation, the adjusted basis of that foreign corporation for purposes of section 864(e)(4) is increased as a result of the application of section 965(b)(4)(B), even though there has been no economic change to the value of the foreign corporation. Under final regulations under section 965, in general, a taxpayer may elect to reduce the basis in the stock of the foreign corporation, on a share by share basis, by the amount of the increase to the E&P of the foreign corporation under section 965(b)(4)(B). See § 1.965–2(f)(2)(i). However, the election does not cause the taxpayer's basis to be reduced below zero, even if the amount of the increase to the E&P of the foreign corporation under section 965(b)(4)(B) exceeds the taxpayer's basis in the stock.

The foreign tax credit proposed regulations provide that, for purposes of determining the adjusted basis of the stock of the foreign corporation under section 864(e)(4), a taxpayer should determine its adjusted basis in the stock of the foreign corporation as if the taxpayer had made in the election in § 1.965–2(f)(2)(i). See proposed § 1.861–12(c)(2)(i)(B)(*1*)(*ii*). After this adjustment, the taxpayer then follows the existing rule under section 864(e)(4) to increase or decrease the adjusted basis in the stock by the E&P of the foreign corporation and its subsidiaries.

A comment requested that the foreign tax credit proposed regulations be amended to make clear that, for purposes of section 864(e)(4), that the reduction in basis under proposed § 1.861–12(c)(2)(i)(B)(*1*)(*ii*) does not cause the taxpayer's basis in the stock in the foreign corporation to be less than zero. This could happen, for example, where the increase in the foreign corporation's E&P under section 965(b)(4)(B) exceeded the taxpayer's adjusted basis in the stock of that foreign corporation.

The Treasury Department and the IRS agreed that, for purposes of applying the expense allocation rules, a taxpayer should not have an adjusted basis below zero in the stock of a foreign corporation. When the adjusted basis of an asset is zero, no expenses are allocated to that asset and thus allowing a negative adjusted basis would serve no purpose for the expense allocation rules. However, because the adjustment to the stock of the foreign corporation in this case is two steps—the adjusted basis is reduced to account for the application of section 965(b)(4)(B) and then increased or decreased by the amount of E&P of the foreign corporation and its subsidiaries—the adjusted basis could be less than zero after the initial adjustment but still be positive after the second adjustment is taken into account. Accordingly, the Treasury Department and the IRS considered two options to address the concern expressed by the comment. These options were: (i) Adopt the foreign tax credit proposed regulations described above with a statement that the reduction in basis is limited to the taxpayer's adjusted basis in the stock of the foreign corporation; or (ii) allow a taxpayer's adjusted basis in the stock of the foreign corporation to be reduced below zero as a result of the adjustment for section 965(b)(4)(B) as long as the adjustment for E&P provided in section 864(e)(4) increased the adjusted basis of the foreign corporation to or above zero.

The first option was to adopt the proposed regulations with a statement that the reduction in basis is limited to the taxpayer's adjusted basis in the stock of the foreign corporation. On one hand, this would address the concerns that the adjustment could cause a taxpayer's adjusted basis in the stock of the foreign corporation to be less than zero for purposes of the expense allocation rules. On the other hand, this would perpetuate some of the distortion created by the application of section 965(b)(4)(B). That is, because the increase in the E&P of the foreign corporation would exceed the downward adjustment in the basis of the foreign corporation, the adjusted basis in the stock of the foreign corporation would still be higher for purposes of section 864(e)(4) than if section 965(b)(4)(B) had not applied.

The second option was to provide that the taxpayer's adjusted basis in the stock of the foreign corporation may be reduced below zero as a result of the adjustment for section 965(b)(4)(B) as long as the adjustment for E&P provided in section 864(e)(4) increased the adjusted basis of the foreign corporation to or above zero. This option fully addresses the non-economic increase to the E&P of the foreign corporation under section 965(b)(4)(B) because the adjusted basis of the foreign corporation is reduced by the full amount of the increase. However, it also still ensures that, for expense allocation purposes, the adjusted basis of the stock of the foreign corporation will not be below zero, after accounting for the E&P adjustment in section 864(e)(4). The Treasury Department and the IRS selected this option for the final regulations because it addressed the concerns regarding negative adjusted basis while most accurately reflecting the value of the stock in the foreign corporation for purposes of the expense allocation rules, and did not increase compliance costs relative to the alternatives.

ii. Affected Taxpayers

The taxpayers potentially affected by this aspect of the final regulations are those taxpayers that own at least 10 percent of a foreign corporation that had its E&P increased under section 965(b)(4)(B). The Treasury Department and the IRS have not estimated how many taxpayers are likely to be affected by these regulations because this level of detail regarding taxpayer filings under section 965 is not readily available. However, 100,000 taxpayers were estimated to pay the section 965 one-time tax. This is an upper-bound estimate of affected taxpayers since only those with an E&P adjustment under section 965(b)(4)(B) would be affected. Information on those taxpayers is not readily available to the Treasury Department and the IRS.

II. Paperwork Reduction Act

In response to comments addressing the notices of proposed rulemaking preceding the final regulations, the Treasury Department and the IRS have added new collections of information with respect to section 951A and revised a collection of information with respect to section 965(n).

The new collections of information in these regulations with respect to section 951A are in § 1.951A–3(e)(3)(ii), (h)(1)(iv)(A), and (h)(2)(ii)(B)(*3*). The revised collection of information with respect to the election under section 965(n) is in § 1.965–7(e)(2)(ii)(B).

The collection of information in § 1.951A–3(e)(3)(ii) is an election that the controlling domestic shareholders of a CFC may make in order for the CFC to continue to use its book depreciation method (rather than converting to ADS) for purposes of determining the adjusted basis in specified tangible property placed in service before its first taxable year beginning after December 22, 2017 if certain conditions are met. This election is made by controlling domestic shareholders by attaching a statement meeting the requirements of § 1.964–1(c)(3)(ii) with their income tax returns following the notice requirements of § 1.964–1(c)(3)(iii). This election, if made by a CFC, simplifies the calculation of the QBAI for the CFC attributable to property placed in service before December 22, 2017, which, and in turn, simplifies the calculation of the DTIR of the CFC's U.S. shareholders attributable to such property. For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (''PRA''), the reporting burden associated with § 1.951A–3(e)(3)(ii) will be reflected in the PRA submission associated with the Form 990 series, Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series (see chart at the end of this part II of this Special Analyses section for the status of the PRA submissions for these forms).

The collection of information in § 1.951A–3(h)(1)(iv)(A) is a statement that a U.S. shareholder must attach to a Form 5471 with respect to a CFC in order to rebut the presumption that a transfer of specified tangible property held by the CFC for less than 12 months was held temporarily with a principal purpose of increasing the DTIR of the U.S. shareholder. The information included in the statement is required in order for the IRS to be aware if the taxpayer takes the position that the temporary ownership rule of § 1.951A–3(h)(1) does not apply. Without this statement, there is a presumption that such property is held temporarily with a principal purpose of increasing DTIR of a U.S. shareholder and a portion of the basis in the property may be disregarded for purposes of calculating QBAI of the CFC that holds the property temporarily. The statement indicates that the U.S. shareholder should be allowed the benefit of basis that would otherwise be disregarded for purposes of calculating QBAI. For purposes of the PRA, the reporting burden associated with § 1.951A–3(h)(1)(iv)(A) will be reflected in the PRA submission associated with Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations'' (OMB control number 1545–0123).

The collection of information in § 1.951A–3(h)(2)(ii)(B)(*3*) is an election to disregard disqualified basis, which is certain basis that was created by reason of a disqualified transfer during the disqualified period of a transferor CFC, as those terms are defined in § 1.951A–3(h)(2)(ii)(C). This election would simplify recordkeeping with respect to the property because a separate record of the disqualified basis and total adjusted basis in the property would not have to be tracked. For purposes of determining disqualified basis, a disqualified transfer includes both a direct transfer during the disqualified period by one CFC to a related person, and also an indirect transfer of property owned by a partnership through, for example, a transfer by a CFC to a related person of an interest in the partnership, for which a section 754 election is in effect. Therefore, disqualified basis may exist in both property held by a CFC and property held by a partnership. Accordingly, there are two methods for making this election based upon whether the property with disqualified basis is held directly by a CFC or indirectly through a partnership in which the CFC is a partner. With respect to property held directly by the CFC, this election is made by controlling domestic shareholders of the CFC by attaching a statement meeting the requirements of § 1.964–1(c)(3)(ii) with their income tax returns following the notice requirements of § 1.964–1(c)(3)(iii). See § 1.951A–3(h)(2)(ii)(B)(*3*)(*ii*). With respect to property held in a partnership in which the CFC is a partner, this election is made by the partnership by filing a statement as described in § 1.754–1(b)(1) attached to the partnership return. See § 1.951A–3(h)(2)(ii)(B)(*3*)(*iii*). For purposes of the PRA, the reporting burden associated with § 1.951A–3(h)(2)(ii)(B)(*3*)(*ii*) will be reflected in the PRA submission associated with the Form 990 series, Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series (see chart at the end of this part II of the Special Analysis section for the status of the PRA submissions for these forms). For purposes of the PRA, the reporting burden associated with § 1.951A–3(h)(2)(ii)(B)(*3*)(*iii*) will be reflected in the PRA submission associated with Form 1065 (see chart at the end of this part II of the Special Analysis section for the status of the PRA submissions for this form).

The collection of information in § 1.965–7(e)(2)(ii)(B) requires a taxpayer revoking a section 965(n) election to attach a statement to that effect to an amended income tax return. The information is required in order for the IRS to be aware if a taxpayer revokes an election. The Treasury Department and the IRS have determined that the reporting burden associated with § 1.965–7(e)(2)(ii)(B) to revoke a section 965(n) election is reflected in the reporting burden associated with making the election. For purposes of the PRA, the reporting burden associated with § 1.965–7(e)(2)(ii)(B) will be reflected in the PRA submission associated with TD 9846, 84 FR 1838 (February 5, 2019) (OMB control number 1545–2280).

The estimates for the number of impacted filers with respect to the collections of information described in this part II of the Special Analysis section are based on filers of income tax returns with a Form 5471 attached because only filers that are U.S. shareholders of CFCs or that have at least a 10 percent ownership in a foreign corporation would be subject to the information collection requirements. The IRS estimates the number of affected filers to be the following:

TAX FORMS IMPACTED

Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
§ 1.951A–3(e)(3)(ii) Election to continue to use income and E&P depreciation method for property placed in service before the first taxable year beginning after December 22, 2017.	25,000–35,000	Form 990 series, Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.
§ 1.951A–3(h)(1)(iv)(A) Statement for less than 12 month property.	25,000–35,000	Form 5471.
§ 1.951A–3(h)(2)(ii)(B)(*3*) Election to disregard disqualified basis.	25,000–35,000	Form 990 series, Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.
§ 1.965–7(e)(2)(ii)(B) Statement to revoke section 965(n) election.	25,000–35,000	Form 990 series, Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.

Source: MeF, DCS, and CDW.

The current status of the PRA submissions related to the tax forms that will be revised as a result of the information collections in the section 951A regulations is provided in the accompanying table. As described above, the reporting burdens associated with the information collections in the regulations are included in the aggregated burden estimates for OMB control numbers 1545–0123 (which represents a total estimated burden time for all forms and schedules for corporations of 3.157 billion hours and total estimated monetized costs of $58.148 billion ($2017)), 1545–0074 (which represents a total estimated burden time, including all other related forms and schedules for individuals, of 1.784 billion hours and total estimated monetized costs of $31.764 billion ($2017)), 1545–0092 (which represents a total estimated burden time, including all other related forms and schedules for trusts and estates, of 307,844,800 hours and total estimated monetized costs of $9.950 billion ($2016)), and 1545–0047 (which represents a total estimated burden time, including all other related forms and schedules for tax-exempt organizations, of 50.450 million hours and total estimated monetized costs of $1,297,300,000 ($2017). The overall burden estimates provided for the OMB control numbers below are aggregate amounts that relate to the entire package of forms associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms that will be revised as a result of the information collections in the regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the regulations. These burdens have been reported for other regulations related to the taxation of cross-border income and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burden that international tax provisions imposed prior to the Act. No burden estimates specific to the forms affected by the regulations are currently available. The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the regulations. The Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates would capture both changes made by the Act and those that arise out of discretionary authority exercised in the final regulations.

The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the final regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden. Proposed revisions (if any) to these forms that reflect the information collections contained in these final regulations will be made available for public comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.html* and will not be finalized until after these forms have been approved by OMB under the PRA.

Form	Type of filer	OMB No.(s)	Status
Forms 990	Tax exempt entities (NEW Model).	1545–0047	Approved by OIRA 12/21/2018 until 12/31/2019. The Form will be updated with OMB number 1545–0047 and the corresponding PRA Notice on the next revision.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201811-1545-003*		
Form 1040	Individual (NEW Model)	1545–0074	Limited Scope submission (1040 only) approved on 12/7/2018 until 12/31/2019. Full ICR submission for all forms in 6/2019. 60 Day FRN not published yet for full collection.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201808-1545-031*		
Form 1041	Trusts and estates	1545–0092	Submitted to OIRA for review on 9/27/2018.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201806-1545-014*		
Form 1065 and 1120	Business (NEW Model)	1545–0123	Approved by OIRA 12/21/2018 until 12/31/2019.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201805-1545-019*		

Form	Type of filer	OMB No.(s)	Status
Form 5471	Business (NEW Model)	1545–0123	Published in the FRN on 10/8/18. Public Comment period closes on 12/10/18.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201805-1545-019*		
	Individual (NEW Model)	1545–0074	Limited Scope submission (1040 only) on 10/11/18 at OIRA for review. Full ICR submission for all forms in 3–2019. 60 Day FRN not published yet for full collection.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201808-1545-031*		

In 2018, the IRS released and invited comments on drafts of the above forms in order to give members of the public advance notice and an opportunity to submit comments. The IRS received no comments on the portions of the forms that relate to section 951A during the comment period. Consequently, the IRS made the forms available in late 2018 and early 2019 for use by the public. The IRS is contemplating making additional changes to forms in order to implement these final regulations.

III. Regulatory Flexibility Act

It is hereby certified that this final regulation will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Sections 951 and 951A generally affect U.S. shareholders of CFCs. Section 965 generally affects U.S. taxpayers who are at least 10-percent shareholders of a foreign corporation. The reporting burdens in § 1.951A–3(e)(3)(ii), (h)(1)(iv)(A), and (h)(2)(ii)(B)(*3*), and § 1.965–7(e)(2)(ii)(B) generally affect U.S. taxpayers that elect to make or revoke certain elections or rebut a presumption. In general, foreign corporations are not considered small entities. Nor are U.S. taxpayers considered small entities to the extent the taxpayers are natural persons or entities other than small entities. For purposes of the PRA, the Treasury Department and the IRS estimate that there are 25,000–35,000 respondents of all sizes that are likely to file Form 5471. Only a small proportion of these filers are likely to be small business entities. This estimate was used in the proposed regulations (REG–104390–18), and comments were requested on the number of small entities that are likely to be impacted by the section 951A regulations.

Examining the gross receipts of the e-filed Forms 5471 that is the basis of the 25,000–35,000 respondent estimates, the Treasury Department and the IRS have determined that the tax revenue from section 951A estimated by the Joint Committee on Taxation for businesses of all sizes is less than 0.3 percent of gross receipts as shown in the table below. Based on data for 2015 and 2016, total gross receipts for all businesses with gross receipts under $25 million is $60 billion while those over $25 million is $49.1 trillion. Given that tax on GILTI inclusion amounts is correlated with gross receipts, this results in businesses with less than $25 million in gross receipts accounting for approximately 0.01 percent of the tax revenue. Data are not readily available to determine the sectoral breakdown of these entities. Based on this analysis, smaller businesses are not significantly impacted by these final regulations.

	2017 billion	2018 billion	2019 billion	2020 billion	2021 billion	2022 billion	2023 billion	2024 billion	2025 billion	2026 billion
JCT tax revenue	7.7	12.5	9.6	9.5	9.3	9.0	9.2	9.3	15.1	21.2
Total gross receipts	30,727	53,870	566,676	59,644	62,684	65,865	69,201	72,710	76,348	80,094
Percent	0.03	0.02	0.02	0.02	0.01	0.01	0.01	0.01	0.02	0.03

Source: RAAS, CDW (E-filed Form 5471, category 4 or 5, C and S corporations and partnerships); Conference Report, at 689.

Although the Treasury Department and the IRS received one comment asserting that a substantial number of small entities would be affected by the proposed regulations, that comment was principally concerned with U.S. citizens living abroad that owned foreign corporations directly or indirectly through other foreign entities. U.S. citizens living abroad are not small business entities; thus, no small entity is affected in this scenario.

Specifically, the small business entities that are subject to the requirements of § 1.951A–3(e)(3)(ii), (h)(1)(iv)(A), and (h)(2)(ii)(B)(*3*) of the final regulations are domestic small entities that are U.S. shareholders of one or more CFCs. The data to assess the number of small entities potentially affected by § 1.951A–3(e)(3)(ii), (h)(1)(iv)(A), and (h)(2)(ii)(B)(*3*) are not readily available. However, businesses that are U.S. shareholders of CFCs are generally not small businesses because the ownership of sufficient stock of a CFC in order to be a U.S. shareholder generally entails significant resources and investment. Therefore, the Treasury Department and the IRS have determined that a substantial number of domestic small business entities will not be subject to § 1.951A–3(e)(3)(ii), (h)(1)(iv)(A), and (h)(2)(ii)(B)(*3*). Moreover, as discussed above, smaller businesses are not significantly impacted by the final regulations. Consequently, the Treasury Department and the IRS have determined that § 1.951A–3(e)(3)(ii), (h)(1)(iv)(A), and (h)(2)(ii)(B)(*3*) will not have a significant economic impact on a substantial number of small entities. Accordingly, it is hereby certified that the collection of information requirements of § 1.951A–3(e)(3)(ii), (h)(1)(iv)(A), and (h)(2)(ii)(B)(*3*) will not have a significant economic impact on a substantial number of small entities.

With respect to § 1.965–7(e)(2)(ii)(B) regarding the revocation of the election under section 965(n), the Treasury Department and the IRS have determined that § 1.965–7(e)(2)(ii)(B) will not have a significant economic impact on a substantial number of small entities for the reasons described in part III of the Special Analyses section in TD 9864, 84 FR 1838 (February 5, 2019). Accordingly, it is hereby certified that the collection of information requirements of § 1.965–7(e)(2)(ii)(B) will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f), the proposed regulations preceding these final regulations (REG–104390–18 and REG–105600–18) were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. These regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

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

VI. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs of the OMB has determined that this Treasury decision is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*) (''CRA''). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. Notwithstanding this requirement, section 808(2) of the CRA allows agencies to dispense with the requirements of section 801 of the CRA when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and that the rule shall take effect at such time as the agency promulgating the rule determines.

Pursuant to section 808(2) of the CRA, the Treasury Department and the IRS find, for good cause, that a 60-day delay in the effective date is unnecessary and contrary to the public interest. The statutory provisions to which these rules relate were enacted on December 22, 2017 and apply to taxable years of foreign corporations and to the taxable years of United States persons in which or with which such taxable years of foreign corporations end. In certain cases, these taxable years have already ended. This means that the statutory provisions are currently effective, and taxpayers may be subject to Federal income tax liability for their 2017 or 2018 taxable years reflecting these provisions. In certain cases, taxpayers may be required to file returns reflecting this Federal income liability during the 60-day period that begins after this rule is published in the **Federal Register**.

These final regulations provide crucial guidance for taxpayers on how to apply the relevant statutory rules, compute their tax liability and accurately file their Federal income tax returns. These final regulations resolve statutory ambiguity, prevent abuse and grant taxpayer relief that would not be available based solely on the statute. Because taxpayers must already comply with the statute, a 60-day delay in the effective date of the final regulations is unnecessary and contrary to the public interest. A delay would place certain taxpayers in the unusual position of having to determine whether to file tax returns during the pre-effective date period based on final regulations that are not yet effective. If taxpayers chose not to follow the final regulations and did not amend their returns after the regulations became effective, it would place significant strain on the IRS to ensure that taxpayers correctly calculated their tax liabilities. For example, in cases where taxpayers and their CFCs have engaged in disqualified transfers or other abusive transactions, a delayed effective date may hamper the IRS' ability to detect such transactions. Moreover, a delayed effective date could create uncertainty and possible restatements with respect to financial statement audits. Therefore, the rules in this Treasury decision are effective on the date of publication in the **Federal Register** and apply in certain cases to taxable years of foreign corporations and United States persons beginning before such date.

The foregoing good cause statement only applies to the 60-day delayed effective date provision of section 801(3) of the CRA and is permitted under section 808(2) of the CRA. The Treasury Department and the IRS hereby comply with all aspects of the CRA and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

Drafting Information

The principal authors of the regulations are Jorge M. Oben, Michael A. Kaercher, and Karen Cate of the Office of Associate Chief Counsel (International), Jennifer N. Keeney of the Office of the Associate Chief Counsel (Passthroughs and Special Industries), and Katherine H. Zhang and Kevin M. Jacobs of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

Effect on Other Documents

The following publications are obsolete as of June 21, 2019:

Notice 2009–7 (2009–3 I.R.B. 312).

Notice 2010–41 (2010–22 I.R.B. 715).

Statement of Availability of IRS Documents

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries for §§ 1.78–1, 1.861–12, 1.951–1, 1.951A–2, 1.951A–3, 1.951A–5, 1.1502–51, 1.6038–5 in numerical order to read in part as follows:

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

Section 1.78–1 also issued under 26 U.S.C. 245A(g).

* * * * *

Section 1.861–12 also issued under 26 U.S.C. 864(e)(7).

* * * * *

Section 1.951–1 also issued under 26 U.S.C. 7701(a).

Section 1.951A–2 also issued under 26 U.S.C. 882(c)(1)(A) and 954(b)(5).

Section 1.951A–3 also issued under 26 U.S.C. 951A(d)(4).

Section 1.951A–5 also issued under 26 U.S.C. 951A(f)(1)(B).

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Section 1.1502–51 also issued under 26 U.S.C. 1502.

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Section 1.6038–5 also issued under 26 U.S.C. 6038.

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■ **Par. 2.** Section 1.78–1 is revised to read as follows:

§ 1.78–1 Gross up for deemed paid foreign tax credit.

(a) *Taxes deemed paid by certain domestic corporations treated as a dividend.* If a domestic corporation chooses to have the benefits of the foreign tax credit under section 901 for any taxable year, an amount that is equal to the U.S. dollar amount of foreign income taxes deemed to be paid by the corporation for the year under section 960 (in the case of section 960(d), determined without regard to the phrase ''80 percent of'' in section 960(d)(1)) is, to the extent provided by this section, treated as a dividend (*a section 78 dividend*) received by the domestic corporation from the foreign corporation. A section 78 dividend is treated as a dividend for all purposes of the Code, except that it is not treated as a dividend for purposes of section 245 or 245A, and does not increase the earnings and profits of the domestic corporation or decrease the earnings and profits of the foreign corporation. Any reduction under section 907(a) of the foreign income taxes deemed paid with respect to combined foreign oil and gas income does not affect the amount treated as a section 78 dividend. See § 1.907(a)–1(e)(3). Similarly, any reduction under section 901(e) of the foreign income taxes deemed paid with respect to foreign mineral income does not affect the amount treated as a section 78 dividend. See § 1.901–3(a)(2)(i), (b)(2)(i)(b), and (d) *Example 8.* Any reduction under section 6038(c)(1)(B) in the foreign taxes paid or accrued by a foreign corporation is taken into account in determining foreign taxes deemed paid and the amount treated as a section 78 dividend. See, for example, § 1.6038–2(k)(5) *Example 1.* To the extent provided in the Code, section 78 does not apply to any tax not allowed as a credit. See, for example, sections 901(j)(3), 901(k)(7), 901(l)(4), 901(m)(6), and 908(b). For rules on determining the source of a section 78 dividend in computing the limitation on the foreign tax credit under section 904, see §§ 1.861–3(a)(3), 1.862–1(a)(1)(ii), and 1.904–5(m)(6). For rules on assigning a section 78 dividend to a separate category, see § 1.904–4.

(b) *Date on which section 78 dividend is received.* A section 78 dividend is considered received by a domestic corporation on the date on which—

(1) The corporation includes in gross income under section 951(a)(1)(A) the amounts by reason of which there are deemed paid under section 960(a) the foreign income taxes that give rise to that section 78 dividend, notwithstanding that the foreign income taxes may be carried back or carried over to another taxable year and deemed to be paid or accrued in such other taxable year under section 904(c); or

(2) The corporation includes in gross income under section 951A(a) the amounts by reason of which there are deemed paid under section 960(d) the foreign income taxes that give rise to that section 78 dividend.

(c) *Applicability date.* This section applies to taxable years of foreign corporations that begin after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. The second sentence of paragraph (a) of this section also applies to section 78 dividends that are received after December 31, 2017, by reason of taxes deemed paid under section 960(a) with respect to a taxable year of a foreign corporation beginning before January 1, 2018.

■ **Par. 3.** Section 1.861–12 is amended by revising paragraph (c)(2) and adding paragraph (k) to read as follows:

§ 1.861–12 Characterization rules and adjustments for certain assets.

* * * * *

(c) * * *

(2) *Basis adjustment for stock in 10 percent owned corporations*—(i) *Taxpayers using the tax book value method*—(A) *General rule.* For purposes of apportioning expenses on the basis of the tax book value of assets, the adjusted basis of any stock in a 10 percent owned corporation owned by the taxpayer either directly or indirectly through a partnership or other pass-through entity (after taking into account the adjustments described in paragraph (c)(2)(i)(B)(*1*) of this section) shall be—

(*1*) Increased by the amount of the earnings and profits of such corporation (and of lower-tier 10 percent owned corporations) attributable to such stock and accumulated during the period the taxpayer or other members of its affiliated group held 10 percent or more of such stock; or

(*2*) Reduced by any deficit in earnings and profits of such corporation (and of lower-tier 10 percent owned corporations) attributable to such stock for such period; or

(*3*) Zero, if after application of paragraphs (c)(2)(i)(A)(*1*) and (*2*) of this section, the adjusted basis of the stock is less than zero.

(B) *Computational rules*—(*1*) *Adjustments to basis*—(*i*) *Application of section 961 or 1293(d).* For purposes of this section, a taxpayer's adjusted basis in the stock of a foreign corporation does not include any amount included in basis under section 961 or 1293(d) of the Code.

(*ii*) *Application of section 965(b).* For purposes of this section, if a taxpayer owned the stock of a specified foreign corporation (as defined in § 1.965–1(f)(45)) as of the close of the last taxable year of the specified foreign corporation that began before January 1, 2018, the taxpayer's adjusted basis in the stock of the specified foreign corporation for that taxable year and any subsequent taxable year is determined as if the taxpayer did not make the election described in § 1.965–2(f)(2)(i) (regardless of whether the election was actually made) and is further adjusted as described in this paragraph (c)(2)(i)(B)(*1*)(*ii*). If § 1.965–2(f)(2)(ii)(B) applied (or would have applied if the election had been made) with respect to the stock of a specified foreign corporation, the taxpayer's adjusted basis in the stock of the specified foreign corporation is reduced by the amount described in § 1.965–2(f)(2)(ii)(B)(*1*) (without regard to the rule for limited basis adjustments in § 1.965–2(f)(2)(ii)(B)(*2*) and the limitation in § 1.965–2(f)(2)(ii)(C), and without regard to the rules regarding the netting of basis adjustments in § 1.965–2(h)(2)). The reduction in the taxpayer's adjusted basis in the stock may reduce the taxpayer's adjusted basis in the stock below zero prior to the application of paragraphs (c)(2)(i)(A)(*1*) and (*2*) of this section. No adjustment is made in the taxpayer's adjusted basis in the stock of a specified foreign corporation for an amount described in § 1.965–2(f)(2)(ii)(A). To the extent that, in an exchange described in section 351, 354, or 356, a taxpayer receives stock of a foreign corporation in exchange for stock of a specified foreign corporation described in this paragraph (c)(2)(i)(B)(*1*)(*ii*), this paragraph (c)(2)(i)(B)(*1*)(*ii*) applies to such stock received.

(*2*) *Amount of earnings and profits.* For purposes of this paragraph (c)(2), earnings and profits (or deficits) are computed under the rules of section 312 and, in the case of a foreign corporation, sections 964(a) and 986 for taxable years of the 10 percent owned corporation ending on or before the close of the taxable year of the taxpayer. Accordingly, the earnings and profits of a controlled foreign corporation include all earnings and profits described in section 959(c). The amount of the earnings and profits with respect to stock of a foreign corporation held by the taxpayer is determined according to the attribution principles of section 1248 and the regulations under section 1248. The attribution principles of section 1248 apply without regard to the requirements of section 1248 that are not relevant to the determination of a shareholder's pro rata portion of earnings and profits, such as whether earnings and profits (or deficits) were derived (or incurred) during taxable years beginning before or after December 31, 1962.

(*3*) *Annual noncumulative adjustment.* The adjustment required by paragraph (c)(2)(i)(A) of this section is made annually and is noncumulative. Thus, the adjusted basis of the stock (determined without regard to prior years' adjustments under paragraph (c)(2)(i)(A) of this section) is adjusted annually by the amount of accumulated earnings and profits (or deficits) attributable to the stock as of the end of each year.

(*4*) *Translation of non-dollar functional currency earnings and profits.* Earnings and profits (or deficits) of a qualified business unit that has a functional currency other than the dollar must be computed under this paragraph (c)(2) in functional currency and translated into dollars using the exchange rate at the end of the taxpayer's current taxable year (and not the exchange rates for the years in which the earnings and profits or deficits were derived or incurred).

(C) *Examples.* The following examples illustrate the application of paragraph (c)(2)(i) of this section.

(*1*) *Example 1: No election described in § 1.965–2(f)(2)(i)*—(*i*) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1 and CFC2, both controlled foreign corporations. USP, CFC1, and CFC2 all use the calendar year as their U.S. taxable year. USP owned CFC1 and CFC2 as of December 31, 2017, and CFC1 and CFC2 were specified foreign corporations with respect to USP. USP's basis in each share of stock of each of CFC1 and CFC2 is identical. USP did not make the election described in § 1.965–2(f)(2)(i), but if USP had made the election, § 1.965–2(f)(2)(ii)(B) would have applied to the stock of CFC2 and the amount described in § 1.965–2(f)(2)(ii)(B)(*1*) (without regard to the rule for limited basis adjustments in § 1.965–2(f)(2)(ii)(B)(*2*) and without regard to the rules regarding the netting of basis adjustments in § 1.965–2(h)(2)) with respect to the stock of CFC2, in aggregate, is $75x. For purposes of determining the value of the stock of CFC1 and CFC2 at the beginning of the 2019 taxable year, without regard to amounts included in basis under section 961 or 1293(d), USP's adjusted basis in the stock of CFC1 is $100x and its adjusted basis in the stock of CFC2 is $350x (before the application of paragraph (c)(2)(i)(B) of this section).

(*ii*) *Analysis.* Under paragraph (c)(2)(i)(B)(*1*)(*ii*) of this section, USP's adjusted basis in the stock of CFC1 is determined as if USP did not make the election described in § 1.965–2(f)(2)(i). USP's adjusted basis in the stock of CFC2 is then reduced by $75x, the amount described in § 1.965–2(f)(2)(ii)(B)(*1*), without regard to the rule for limited basis adjustments in § 1.965–2(f)(2)(ii)(B)(*2*) and without regard to the rules regarding the netting of basis adjustments in § 1.965–2(h)(2). No adjustment is made to USP's adjusted basis in the stock in CFC1. Accordingly, for purposes of determining the value of stock of CFC1 and CFC2 at the beginning of the 2019 taxable year, USP's adjusted basis in the stock of CFC1 is $100x and USP's adjusted basis in the stock of CFC2 is $275x ($350x − $75x).

(*2*) *Example 2: Election described in § 1.965–2(f)(2)(i)*—(*i*) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1, which owns all of the stock of CFC2, both controlled foreign corporations. USP, CFC1, and CFC2 all use the calendar year as their U.S. taxable year. USP owned CFC1, and CFC1 owned CFC2 as of December 31, 2017, and CFC1 and CFC2 were specified foreign corporations with respect to USP. USP's basis in each share of stock of CFC1 is identical. USP made the election described in § 1.965–2(f)(2)(i). As a result of the election, USP was required to increase its basis in the stock of CFC1 by $90x under § 1.965–2(f)(2)(ii)(A)(*1*), and to decrease its basis in the stock of CFC1 by $90x under § 1.965–2(f)(2)(ii)(B)(*1*). Pursuant to § 1.965–2(h)(2), USP netted the increase of $90x against the decrease of $90x and made no net adjustment to the basis in the stock of CFC1. For purposes of determining the value of the stock of CFC1 at the beginning of the 2019 taxable year, without regard to amounts included in basis under section 961 or 1293(d), USP's adjusted basis in the stock of CFC1 is $600x (before the application of paragraph (c)(2)(i)(B) of this section).

(*ii*) *Analysis.* Under paragraph (c)(2)(i)(B)(*1*)(*ii*) of this section, USP's adjusted basis in the stock of CFC1 is determined as if USP did not make the election described in § 1.965–2(f)(2)(i). While USP made the election, no adjustment was made to the stock of CFC1 as a result of the election. However, USP's adjusted basis in the stock of CFC1 is then reduced by $90x, the amount described in § 1.965–2(f)(2)(ii)(B)(*1*), without regard to the rules regarding the netting of basis described in § 1.965–2(h)(2). No adjustment is made to USP's basis in the stock of CFC1 for the amount described in § 1.965–2(f)(2)(ii)(A)(*1*). Accordingly, for purposes of determining the value of stock of CFC1 at the beginning of the 2019 taxable year, USP's adjusted basis in the stock of CFC1 is $510x ($600x − $90x).

(*3*) *Example 3: Adjusted basis below zero*—(*i*) *Facts.* The facts are the same as in paragraph (c)(2)(i)(C)(*1*)(*i*) of this section (the facts in *Example 1*), except that for purposes of determining the value of the stock of CFC2 at the beginning of the 2019 taxable year, without regard to amounts included in basis under section 961 or 1293(d), USP's adjusted basis in the stock of CFC2 is $0 (before the application of paragraph (c)(2)(i)(B) of this section). Additionally, the adjusted basis of USP in the stock of CFC1 and CFC2 at the end of the 2019 taxable year is the same as at the beginning of that year, and as of the end of the 2019 taxable year, CFC1 has earnings and profits of $25x and CFC2 has earnings and profits of $50x that are attributable to the stock owned by USP and accumulated during the period that USP held the stock of CFC1 and CFC2.

(*ii*) *Analysis.* The analysis is the same as in paragraph (c)(2)(i)(C)(*1*)(*ii*) of this section (the analysis in *Example 1*) except that for purposes of determining the value of stock of CFC1 and CFC2 at the beginning of the 2019 taxable year, USP's adjusted basis in the stock of CFC2 is −$75x ($0 − $75x). Because USP's basis in the stock of CFC1 and CFC2 is the same at the end of the 2019 taxable year, prior to the application of the adjustments in paragraphs (c)(2)(i)(A)(*1*) and (*2*) of this section, USP's adjusted basis in the stock of CFC1 is $100x and USP's adjusted basis in the stock of CFC2 is −$75x. Under paragraph (c)(2)(i)(A)(*1*) of this section, for purposes of apportioning expenses on the basis of the tax book value of assets, USP's adjusted basis in the stock of CFC1 is $125x ($100x + $25x). Under paragraph (c)(2)(i)(A)(*3*) of this section, for purposes of apportioning expenses on the basis of the tax book value of assets, USP's adjusted basis in the stock of CFC2 is $0 because after applying paragraph (c)(2)(i)(A)(*1*) of this section, USP's adjusted basis in the stock of CFC2 is less than zero (−$75x + $50x).

(*4*) *Example 4: Election described in § 1.965–2(f)(2)(i) and adjusted basis below zero*—(*i*) *Facts.* The facts are the same as in paragraph (c)(2)(i)(C)(*3*)(*i*) of this section (the facts in *Example 3*), except that USP made the election described in § 1.965–2(f)(2)(i) and, as result, recognized $75x of gain under § 1.965–2(h)(3).

(*ii*) *Analysis.* The analysis is the same as in paragraph (c)(2)(i)(C)(*3*)(*ii*) of this section (the analysis in *Example 3*).

(c)(2)(ii) through (c)(2)(vi) [Reserved]. For further guidance, see § 1.861–12T(c)(2)(ii) through (c)(2)(vi).

* * * * *

(k) *Applicability date.* This section applies to taxable years that both begin after December 31, 2017, and end on or after December 4, 2018. Paragraphs (c)(2)(i)(A) and (c)(2)(i)(B)(*1*)(*ii*) of this section also apply to the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to a United States person, the taxable year in which or with which such taxable year of the foreign corporation ends.

■ **Par. 4.** Section 1.861–12T is amended by revising paragraph (c)(2)(i) to read as follows:

§ 1.861–12T Characterization rules and adjustments for certain assets (temporary).

* * * * *

(c) * * *

(c)(2)(i)(A) through (C) [Reserved]. For further guidance, see § 1.861–12(c)(2)(i)(A) through (c)(2)(i)(C).

* * * * *

■ **Par. 5.** Section 1.951–1 is amended by:

■ 1. Revising paragraph (a) introductory text.

■ 2. Revising paragraphs (b)(1)(ii), (b)(2), (c), (e), and (g)(1).

■ 3. Adding paragraphs (h) and (i).

The revisions and addition read as follows:

§ 1.951–1 Amounts included in gross income of United States shareholders.

(a) *In general.* If a foreign corporation is a controlled foreign corporation (within the meaning of section 957) at any time during any taxable year of such corporation, every person—

* * * * *

(b) * * *

(1) * * *

(ii) The lesser of—

(A) The amount of distributions received by any other person during such taxable year as a dividend with respect to such stock multiplied by a fraction, the numerator of which is the subpart F income of such corporation for the taxable year and the denominator of which is the sum of the subpart F income and the tested income (as defined in section 951A(c)(2)(A) and § 1.951A–2(b)(1)) of such corporation for the taxable year, and

(B) The dividend which would have been received by such other person if the distributions by such corporation to all its shareholders had been the amount which bears the same ratio to the subpart F income of such corporation for the taxable year as the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire taxable year.

(2) *Examples.* The following examples illustrate the application of this paragraph (b).

(i) *Facts.* The following facts are assumed for purposes of the examples.

(A) A is a United States shareholder.

(B) M is a foreign corporation that has only one class of stock outstanding.

(C) B is a nonresident alien individual, and stock owned by B is not considered owned by a domestic entity under section 958(b).

(D) P and R are foreign corporations.

(E) All persons use the calendar year as their taxable year.

(F) Year 1 ends on or after October 3, 2018, and has 365 days.

(ii) *Example 1*—(A) *Facts.* A owns 100% of the stock of M throughout Year 1. For Year 1, M derives $100x of subpart F income, has $100x of earnings and profits, and makes no distributions.

(B) *Analysis.* Under section 951(a)(2) and paragraph (b)(1) of this section, A's pro rata share of the subpart F income of M for Year 1 is $100x.

(iii) *Example 2*—(A) *Facts.* The facts are the same as in paragraph (b)(2)(ii)(A) of this section (the facts in *Example 1*), except that instead of holding 100% of the stock of M for the entire year, A sells 60% of such stock to B on May 26, Year 1. Thus, M is a controlled foreign corporation for the period January 1, Year 1, through May 26, Year 1.

(B) *Analysis.* Under section 951(a)(2)(A) and paragraph (b)(1)(i) of this section, A's pro rata share of the subpart F income of M is limited to the subpart F income of M which bears the same ratio to its subpart F income for such taxable year ($100x) as the part of such year during which M is a controlled foreign corporation bears to the entire taxable year (146/365). Accordingly, under section 951(a)(2) and paragraph (b)(1) of this section, A's pro rata share of the subpart F income of M for Year 1 is $40x ($100x × 146/365).

(iv) *Example 3*—(A) *Facts.* The facts are the same as in paragraph (b)(2)(ii)(A) of this section (the facts in *Example 1*), except that instead of holding 100% of the stock of M for the entire year, A holds 60% of such stock on December 31, Year 1, having acquired such stock on May 26, Year 1, from B, who owned such stock from January 1, Year 1. Before A's acquisition of the stock, M had distributed a dividend of $15x to B in Year 1 with respect to the stock so acquired by A. M has no tested income for Year 1.

(B) *Analysis.* Under section 951(a)(2) and paragraph (b)(1) of this section, A's pro rata share of the subpart F income of M for Year 1 is $21x, such amount being determined as follows:

Table 1 to paragraph (b)(2)(iv)(B):	
M's subpart F income for Year 1	$100x
Less: Reduction under section 951(a)(2)(A) for period (1–1 through 5–26) during which M is not a controlled foreign corporation ($100x × 146/365)	40x
Subpart F income for Year 1 as limited by section 951(a)(2)(A)	60x
A's pro rata share of subpart F income as determined under section 951(a)(2)(A) (0.6 × $60x)	36x
Less: Reduction under section 951(a)(2)(B) for dividends received by B during Year 1 with respect to the stock of M acquired by A:	
(i) Dividend received by B ($15x), multiplied by a fraction ($100x/$100x), the numerator of which is the subpart F income of such corporation for the taxable year ($100x) and the denominator of which is the sum of the subpart F income and the tested income of such corporation for the taxable year ($100x) ($15x × ($100x/$100x))	15x
(ii) B's pro rata share (60%) of the amount which bears the same ratio to the subpart F income of such corporation for the taxable year ($100x) as the part of such year during which A did not own (within the meaning of section 958(a)) such stock bears to the entire taxable year (146/365) (0.6 × $100x × (146/365))	24x
(iii) Amount of reduction under section 951(a)(2)(B) (lesser of (i) or (ii))	15x
A's pro rata share of subpart F income as determined under section 951(a)(2)	21x

(v) *Example 4*—(A) *Facts.* A owns 100% of the only class of stock of P throughout Year 1, and P owns 100% of the only class of stock of R throughout Year 1. For Year 1, R derives $100x of subpart F income, has $100x of earnings and profits, and distributes a dividend of $20x to P. R has no gross tested income. P has no income for Year 1 other than the dividend received from R.

(B) *Analysis.* Under section 951(a)(2) and paragraph (b)(1) of this section, A's pro rata share of the subpart F income of R for Year 1 is $100x. A's pro rata share of the subpart F income of R is not reduced under section 951(a)(2)(B) and paragraph (b)(1)(ii) of this section for the dividend of $20x paid to P because there was no part of Year 1 during which A did not own (within the meaning of section 958(a)) the stock of R. Under section 959(b), the $20x distribution from R to P is not again includible in the gross income of A under section 951(a). The $20x distribution from R to P is not includible in the gross tested income of P.

(vi) *Example 5*—(A) *Facts.* The facts are the same as in paragraph (b)(2)(v)(A) of this section (the facts in *Example 4*), except that instead of holding 100% of the stock of R for the entire year, P holds 60% of such stock on December 31, Year 1, having acquired such stock on March 14, Year 1, from B. Before P's acquisition of the stock, R had distributed a dividend of $100x to B in Year 1 with respect to the stock so acquired by P. The stock interest so acquired by P was owned by B from January 1, Year 1, until acquired by P. R also has $300x of tested income for Year 1.

(B) *Analysis*—(*1*) *Limitation of pro rata share of subpart F income.* Under section 951(a)(2) and paragraph (b)(1) of this section, A's pro rata share of the subpart F income of

M for Year 1 is $28x, such amount being determined as follows:

Table 1 to paragraph (b)(2)(vi)(B)(*1*):	
R's subpart F income for Year 1	$100x
Less: Reduction under section 951(a)(2)(A) for period (1–1 through 3–14) during which R is not a controlled foreign corporation ($100x × 73/365)	20x
Subpart F income for Year 1 as limited by section 951(a)(2)(A)	80x
A's pro rata share of subpart F income as determined under section 951(a)(2)(A) (0.6 × $80x)	48x
Less: Reduction under section 951(a)(2)(B) for dividends received by B during Year 1 with respect to the stock of R indirectly acquired by A:	
(i) Dividend received by B ($100x) multiplied by a fraction ($100x/$400x), the numerator of which is the subpart F income of such corporation for the taxable year ($100x) and the denominator of which is the sum of the subpart F income and the tested income of such corporation for the taxable year ($400x) ($100x × ($100x/$400x))	25x
(ii) B's pro rata share (60%) of the amount which bears the same ratio to the subpart F income of such corporation for the taxable year ($100x) as the part of such year during which A did not own (within the meaning of section 958(a)) such stock bears to the entire taxable year (73/365) (0.6 × $100x × (73/365))	12x
(iii) Amount of reduction under section 951(a)(2)(B) (lesser of (i) or (ii))	12x
A's pro rata share of subpart F income as determined under section 951(a)(2)	36x

(*2*) *Limitation of pro rata share of tested income.* Under section 951A(e)(1) and § 1.951A–1(d)(2), A's pro rata share of the tested income of M for Year 1 is $108x, such amount being determined as follows:

Table 1 to paragraph (b)(2)(vi)(B)(*2*):	
R's tested income for Year 1	$300x
Less: Reduction under section 951(a)(2)(A) for period (1–1 through 3–14) during which R is not a controlled foreign corporation ($300x × 73/365)	60x
Tested income for Year 1 as limited by under section 951(a)(2)(A)	240x
A's pro rata share of tested income as determined under § 1.951A–1(d)(2) (0.6 × $240x)	144x
Less: Reduction under section 951(a)(2)(B for dividends received by B during Year 1 with respect to the stock of R indirectly acquired by A:	
(i) Dividend received by B ($100x) multiplied by a fraction ($300x/$400x), the numerator of which is the tested income of such corporation for the taxable year ($300x) and the denominator of which is the sum of the subpart F income and the tested income of such corporation for the taxable year ($400x) ($100x × ($300x/$400x))	75x
(ii) B's pro rata share (60%) of the amount which bears the same ratio to the tested income of such corporation for the taxable year ($300x) as the part of such year during which A did not own (within the meaning of section 958(a)) such stock bears to the entire taxable year (73/365) (0.6 × $300x × (73/365))	36x
(iii) Amount of reduction under section 951(a)(2)(B) (lesser of (i) or (ii))	36x
A's pro rata share of tested income under section 951A(e)(1)	108x

(c) [Reserved]

* * * * *

(e) *Pro rata share of subpart F income defined*—(1) *In general*—(i) *Hypothetical distribution.* For purposes of paragraph (b) of this section, a United States shareholder's pro rata share of a controlled foreign corporation's subpart F income for a taxable year is the amount that bears the same ratio to the corporation's subpart F income for the taxable year as the amount of the corporation's allocable earnings and profits that would be distributed with respect to the stock of the corporation which the United States shareholder owns (within the meaning of section 958(a)) for the taxable year bears to the total amount of the corporation's allocable earnings and profits that would be distributed with respect to the stock owned by all the shareholders of the corporation if all the allocable earnings and profits of the corporation for the taxable year (not reduced by actual distributions during the year) were distributed (*hypothetical distribution*) on the last day of the corporation's taxable year on which such corporation is a controlled foreign corporation (*hypothetical distribution date*).

(ii) *Definition of allocable earnings and profits.* For purposes of this paragraph (e), the term *allocable earnings and profits* means, with respect to a controlled foreign corporation for a taxable year, the amount that is the greater of—

(A) The earnings and profits of the corporation for the taxable year determined under section 964; and

(B) The sum of the subpart F income (as determined under section 952 after the application of section 951A(c)(2)(B)(ii) and § 1.951A–6(b)) of the corporation for the taxable year and the tested income (as defined in section 951A(c)(2)(A) and § 1.951A–2(b)(1)) of the corporation for the taxable year.

(2) *One class of stock.* If a controlled foreign corporation for a taxable year has only one class of stock outstanding on the hypothetical distribution date, the amount of the corporation's allocable earnings and profits distributed in the hypothetical distribution with respect to each share in the class of stock is determined as if the hypothetical distribution were made pro rata with respect to each share in the class of stock.

(3) *More than one class of stock.* If a controlled foreign corporation for a taxable year has more than one class of stock outstanding on the hypothetical distribution date, the amount of the corporation's allocable earnings and profits distributed in the hypothetical distribution with respect to each class of stock is determined based on the distribution rights of each class of stock

on the hypothetical distribution date, which amount is then further distributed pro rata with respect to each share in the class of stock. Subject to paragraphs (e)(4) through (6) of this section, the distribution rights of a class of stock are determined taking into account all facts and circumstances related to the economic rights and interest in the allocable earnings and profits of the corporation of each class, including the terms of the class of stock, any agreement among the shareholders and, if and to the extent appropriate, the relative fair market value of shares of stock. For purposes of this paragraph (e)(3), facts and circumstances do not include actual distributions (including distributions by redemption) or any amount treated as a dividend under any other provision of subtitle A of the Internal Revenue Code (for example, under section 78, 356(a)(2), 367(b), or 1248) made during the taxable year that includes the hypothetical distribution date.

(4) *Special rules*—(i) *Redemptions, liquidations, and returns of capital.* No amount of allocable earnings and profits is distributed in the hypothetical distribution with respect to a particular class of stock based on the terms of the class of stock of the controlled foreign corporation or any agreement or arrangement with respect thereto that would result in a redemption (even if such redemption would be treated as a distribution of property to which section 301 applies pursuant to section 302(d)), a distribution in liquidation, or a return of capital.

(ii) *Certain cumulative preferred stock.* If a controlled foreign corporation has outstanding a class of redeemable preferred stock with cumulative dividend rights and dividend arrearages on such stock do not compound at least annually at a rate that equals or exceeds the applicable Federal rate (as defined in section 1274(d)(1)) that applies on the date the stock is issued for the term from such issue date to the mandatory redemption date based on a comparable compounding assumption (the *relevant AFR*), the amount of the corporation's allocable earnings and profits distributed in the hypothetical distribution with respect to the class of stock may not exceed the amount of dividends actually paid during the taxable year with respect to the class of stock plus the present value at the end of the controlled foreign corporation's taxable year of the unpaid current dividends with respect to the class determined using the relevant AFR and assuming the dividends will be paid at the mandatory redemption date. For purposes of this paragraph (e)(4)(ii), if the class of preferred stock does not have a mandatory redemption date, the mandatory redemption date is the date that the class of preferred stock is expected to be redeemed based on all facts and circumstances.

(iii) *Dividend arrearages.* If there is an arrearage in dividends for prior taxable years with respect to a class of preferred stock of a controlled foreign corporation, an amount of the corporation's allocable earnings and profits is distributed in the hypothetical distribution to the class of preferred stock by reason of the arrearage only to the extent the arrearage exceeds the accumulated earnings and profits of the controlled foreign corporation remaining from prior taxable years beginning after December 31, 1962, as of the beginning of the taxable year, or the date on which such stock was issued, whichever is later (the *applicable date*). If there is an arrearage in dividends for prior taxable years with respect to more than one class of preferred stock, the previous sentence is applied to each class in order of priority, except that the accumulated earnings and profits remaining after the applicable date are reduced by the allocable earnings and profits necessary to satisfy arrearages with respect to classes of stock with a higher priority. For purposes of this paragraph (e)(4)(iii), the amount of any arrearage with respect to stock described in paragraph (e)(4)(ii) of this section is determined in the same manner as the present value of unpaid current dividends on such stock under paragraph (e)(4)(ii) of this section.

(5) *Restrictions or other limitations on distributions*—(i) *In general.* A restriction or other limitation on distributions of an amount of earnings and profits by a controlled foreign corporation is not taken into account in determining the amount of the corporation's allocable earnings and profits distributed in a hypothetical distribution to a class of stock of the controlled foreign corporation.

(ii) *Definition.* For purposes of paragraph (e)(5)(i) of this section, a restriction or other limitation on distributions includes any limitation that has the effect of limiting the distribution of an amount of earnings and profits by a controlled foreign corporation with respect to a class of stock of the corporation, other than currency or other restrictions or limitations imposed under the laws of any foreign country as provided in section 964(b).

(iii) *Exception for certain preferred distributions.* For purposes of paragraph (e)(5)(i) of this section, the right to receive periodically a fixed amount (whether determined by a percentage of par value, a reference to a floating coupon rate, a stated return expressed in terms of a certain amount of U.S. dollars or foreign currency, or otherwise) with respect to a class of stock the distribution of which is a condition precedent to a further distribution of earnings and profits that year with respect to any class of stock (not including a distribution in partial or complete liquidation) is not a restriction or other limitation on the distribution of earnings and profits by a controlled foreign corporation.

(iv) *Illustrative list of restrictions and limitations.* Except as provided in paragraph (e)(5)(iii) of this section, restrictions or other limitations on distributions include, but are not limited to—

(A) An arrangement that restricts the ability of a controlled foreign corporation to pay dividends on a class of stock of the corporation until a condition or conditions are satisfied (for example, until another class of stock is redeemed);

(B) A loan agreement entered into by a controlled foreign corporation that restricts or otherwise affects the ability to make distributions on its stock until certain requirements are satisfied; or

(C) An arrangement that conditions the ability of a controlled foreign corporation to pay dividends to its shareholders on the financial condition of the corporation.

(6) *Transactions and arrangements with a principal purpose of changing pro rata shares.* Appropriate adjustments must be made to the allocation of allocable earnings and profits that would be distributed (without regard to this paragraph (e)(6)) in a hypothetical distribution with respect to any share of stock outstanding as of the hypothetical distribution date to disregard the effect on the hypothetical distribution of any transaction or arrangement that is undertaken as part of a plan a principal purpose of which is the avoidance of Federal income taxation by changing the amount of allocable earnings and profits distributed in any hypothetical distribution with respect to such share. This paragraph (e)(6) also applies for purposes of the pro rata share rules described in § 1.951A–1(d) that reference this paragraph (e), including the rules in § 1.951A–1(d)(3) that determine the pro rata share of qualified business asset investment based on the pro rata share of tested income.

(7) *Examples.* The following examples illustrate the application of this paragraph (e).

(i) *Facts.* Except as otherwise stated, the following facts are assumed for purposes of the examples:

(A) FC1 is a controlled foreign corporation.

(B) USP1 and USP2 are domestic corporations.

(C) Individual A is a foreign individual, and FC2 is a foreign corporation that is not a controlled foreign corporation.

(D) All persons use the calendar year as their taxable year.

(E) Any ownership of FC1 by any shareholder is for all of Year 1.

(F) The common shareholders of FC1 are entitled to dividends when declared by FC1's board of directors.

(G) There are no accrued but unpaid dividends with respect to preferred shares, the preferred stock is not described in paragraph (e)(4)(ii) of this section, and common shares have positive liquidation value.

(H) There are no other facts and circumstances related to the economic rights and interest of any class of stock in the allocable earnings and profits of a foreign corporation, and no transaction or arrangement was entered into as part of a plan a principal purpose of which is the avoidance of Federal income taxation.

(I) FC1 has neither tested income within the meaning of section 951A(c)(2)(A) and § 1.951A–2(b)(1) nor tested loss within the meaning of section 951A(c)(2)(B)(i) and § 1.951A–2(b)(2).

(ii) *Example 1: Single class of stock*—(A) *Facts.* FC1 has outstanding 100 shares of one class of stock. USP1 owns 60 shares of FC1. USP2 owns 40 shares of FC1. For Year 1, FC1 has $1,000x of earnings and profits and $100x of subpart F income within the meaning of section 952.

(B) *Analysis.* FC1 has one class of stock. Therefore, under paragraph (e)(2) of this section, FC1's allocable earnings and profits of $1,000x are distributed in the hypothetical distribution pro rata to each share of stock. Accordingly, under paragraph (e)(1) of this section, for Year 1, USP1's pro rata share of FC1's subpart F income is $60x ($100x × $600x/$1,000x) and USP2's pro rata share of FC1's subpart F income is $40x ($100x × $400x/$1,000x).

(iii) *Example 2: Common and preferred stock*—(A) *Facts.* FC1 has outstanding 70 shares of common stock and 30 shares of 4% nonparticipating, voting preferred stock with a par value of $10x per share. USP1 owns all of the common shares. Individual A owns all of the preferred shares. For Year 1, FC1 has $100x of earnings and profits and $50x of subpart F income within the meaning of section 952.

(B) *Analysis.* The distribution rights of the preferred shares are not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. Under paragraph (e)(3) of this section, the amount of FC1's allocable earnings and profits distributed in the hypothetical distribution with respect to Individual A's preferred shares is $12x (0.04 × $10x × 30) and with respect to USP1's common shares is $88x ($100x − $12x). Accordingly, under paragraph (e)(1) of this section, USP1's pro rata share of FC1's subpart F income is $44x ($50x − $88x/$100x) for Year 1.

(iv) *Example 3: Restriction based on cumulative income*—(A) *Facts.* FC1 has outstanding 10 shares of common stock and 400 shares of 2% nonparticipating, voting preferred stock with a par value of $1x per share. USP1 owns all of the common shares. FC2 owns all of the preferred shares. USP1 and FC2 cause the governing documents of FC1 to provide that no dividends may be paid to the common shareholders until FC1 cumulatively earns $100,000x of income. For Year 1, FC1 has $50x of earnings and profits and $50x of subpart F income within the meaning of section 952.

(B) *Analysis.* The agreement restricting FC1's ability to pay dividends to common shareholders until FC1 cumulatively earns $100,000x of income is a restriction or other limitation within the meaning of paragraph (e)(5) of this section. Therefore, the restriction is disregarded for purposes of determining the amount of FC1's allocable earnings and profits distributed in the hypothetical distribution to a class of stock. The distribution rights of the preferred shares are not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. Under paragraph (e)(3) of this section, the amount of FC1's allocable earnings and profits distributed in the hypothetical distribution with respect to FC2's preferred shares is $8x (0.02 × $1x × 400) and with respect to USP1's common shares is $42x ($50x − $8x). Accordingly, under paragraph (e)(1) of this section, USP1's pro rata share of FC1's subpart F income is $42x for Year 1.

(v) *Example 4: Redemption rights*—(A) *Facts.* FC1 has outstanding 40 shares of common stock and 10 shares of 4% nonparticipating, preferred stock with a par value of $50x per share. Pursuant to the terms of the preferred stock, FC1 has the right to redeem at any time, in whole or in part, the preferred stock. FC2 owns all of the preferred shares. USP1, wholly owned by FC2, owns all of the common shares. Pursuant to the governing documents of FC1, no dividends may be paid to the common shareholders while the preferred stock is outstanding. For Year 1, FC1 has $100x of earnings and profits and $100x of subpart F income within the meaning of section 952.

(B) *Analysis.* The agreement restricting FC1's ability to pay dividends to common shareholders while the preferred stock is outstanding is a restriction or other limitation within the meaning of paragraph (e)(5) of this section. Therefore, the restriction is disregarded for purposes of determining the amount of FC1's allocable earnings and profits distributed in the hypothetical distribution to a class of stock. Under paragraph (e)(4)(i) of this section, no amount of allocable earnings and profits is distributed in the hypothetical distribution to the preferred shareholders on the hypothetical distribution date as a result of FC1's right to redeem the preferred shares. This is the case regardless of the restriction on paying dividends to the common shareholders while the preferred stock is outstanding, and regardless of the fact that a redemption of FC2's preferred shares would be treated as a distribution to which section 301 applies under section 302(d) (due to FC2's constructive ownership of the common shares). Thus, neither the restriction on paying dividends to the common shareholders while the preferred stock is outstanding nor FC1's redemption rights with respect to the preferred shares affects the distribution of allocable earnings and profits in the hypothetical distribution to FC1's shareholders. However, the distribution rights of the preferred shares are not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. As a result, the amount of FC1's allocable earnings and profits distributed in the hypothetical distribution with respect to FC2's preferred shares is $20x (0.04 × $50x × 10) and with respect to USP1's common shares is $80x ($100x − $20x). Accordingly, under paragraph (e)(1) of this section, USP1's pro rata share of FC1's subpart F income is $80x for Year 1.

(vi) *Example 5: Shareholder owns common and preferred stock*—(A) *Facts.* FC1 has outstanding 40 shares of common stock and 60 shares of 6% nonparticipating, nonvoting preferred stock with a par value of $100x per share. USP1 owns 30 shares of the common stock and 15 shares of the preferred stock during Year 1. The remaining 10 shares of common stock and 45 shares of preferred stock of FC1 are owned by Individual A. For Year 1, FC1 has $1,000x of earnings and profits and $500x of subpart F income within the meaning of section 952.

(B) *Analysis.* The right of the holder of the preferred stock to receive 6% of par value is not a restriction or other limitation within the meaning of paragraph (e)(5) of this section. The amount of FC1's allocable earnings and profits distributed in the hypothetical distribution with respect to FC1's preferred shares is $360x (0.06 × $100x × 60) and with respect to its common shares is $640x ($1,000x − $360x). As a result, the amount of FC1's allocable earnings and profits distributed in the hypothetical distribution to USP1 is $570x, the sum of $90x ($360x × 15/60) with respect to its preferred shares and $480x ($640x × 30/40) with respect to its common shares. Accordingly, under paragraph (e)(1) of this section, USP1's pro rata share of the subpart F income of FC1 is $285x ($500x × $570x/$1,000x).

(vii) *Example 6: Subpart F income and tested income*—(A) *Facts.* FC1 has outstanding 700 shares of common stock and 300 shares of 4% nonparticipating, voting preferred stock with a par value of $100x per share. USP1 owns all of the common shares. USP2 owns all of the preferred shares. For Year 1, FC1 has $10,000x of earnings and profits, $2,000x of subpart F income within the meaning of section 952, and $9,000x of tested income within the meaning of section 951A(c)(2)(A) and § 1.951A–2(b)(1).

(B) *Analysis*—(*1*) *Hypothetical distribution.* The allocable earnings and profits of FC1 determined under paragraph (e)(1)(ii) of this section are \$11,000x, the greater of FC1's earnings and profits as determined under section 964 (\$10,000x) or the sum of FC1's subpart F income and tested income (\$2,000x + \$9,000x). The amount of FC1's allocable earnings and profits distributed in the hypothetical distribution with respect to USP2's preferred shares is \$1,200x (0.04 × \$100x × 300) and with respect to USP1's common shares is \$9,800x (\$11,000x − \$1,200x).

(*2*) *Pro rata share of subpart F income.* Accordingly, under paragraph (e)(1) of this section, USP1's pro rata share of FC1's subpart F income is \$1,782x (\$2,000x × \$9,800x/\$11,000x), and USP2's pro rata share of FC1's subpart F income is \$218x (\$2,000x × \$1,200x/\$11,000x).

(*3*) *Pro rata share of tested income.* Accordingly, under § 1.951A–1(d)(2), USP1's pro rata share of FC1's tested income is \$8,018x (\$9,000x × \$9,800x/\$11,000x), and USP2's pro rata share of FC1's tested income is \$982x (\$9,000x × \$1,200x/\$11,000x) for Year 1.

(viii) *Example 7: Subpart F income and tested loss*—(A) *Facts.* The facts are the same as in paragraph (e)(7)(vii)(A) of this section (the facts in *Example 6*), except that for Year 1, FC1 has \$8,000x of earnings and profits, \$10,000x of subpart F income within the meaning of section 952 (but without regard to the limitation in section 952(c)(1)(A)), and \$2,000x of tested loss within the meaning of section 951A(c)(2)(B)(i) and § 1.951A–2(b)(2). Under section 951A(c)(2)(B)(ii) and § 1.951A–6(b), the earnings and profits of FC1 are increased for purposes of section 952(c)(1)(A) by the amount of FC1's tested loss. Accordingly, after the application of section 951A(c)(2)(B)(ii) and § 1.951A–6(b), the subpart F income of FC1 is \$10,000x.

(B) *Analysis*—(*1*) *Pro rata share of subpart F income.* The allocable earnings and profits determined under paragraph (e)(1)(ii) of this section are \$10,000x, the greater of the earnings and profits of FC1 determined under section 964 (\$8,000x) or the sum of FC1's subpart F income and tested income (\$10,000x + \$0). The amount of FC1's allocable earnings and profits distributed in the hypothetical distribution with respect to USP2's preferred shares is \$1,200x (.04 × \$100x × 300) and with respect to USP1's common shares is \$8,800x (\$10,000x − \$1,200x). Accordingly, under paragraph (e)(1) of this section, for Year 1, USP1's pro rata share of FC1's subpart F income is \$8,800x and USP2's pro rata share of FC1's subpart F income is \$1,200x.

(*2*) *Pro rata share of tested loss.* The allocable earnings and profits determined under § 1.951A–1(d)(4)(i)(B) are \$2,000x, the amount of FC1's tested loss. Under § 1.951A–1(d)(4)(i)(C), the entire \$2,000x of tested loss is allocated in the hypothetical distribution to USP1's common shares. Accordingly, USP1's pro rata share of the tested loss is \$2,000x.

* * * * *

(g) * * *

(1) *In general.* For purposes of sections 951 through 964, the term *United States shareholder* means, with respect to a foreign corporation, a United States person (as defined in section 957(c)) who 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 such foreign corporation, or 10 percent or more of the total value of shares of all classes of stock of such foreign corporation.

* * * * *

(h) *Special rule for partnership blocker structures*—(1) *In general.* For purposes of sections 951 through 964, other than for purposes of 951A, a controlled domestic partnership is treated as a foreign partnership in determining the stock of a controlled foreign corporation owned (within the meaning of section 958(a)) by a United States person if the following conditions are satisfied—

(i) Without regard to paragraph (h) of this section, the controlled domestic partnership owns (within the meaning of section 958(a)) stock of a controlled foreign corporation; and

(ii) If the controlled domestic partnership (and all other controlled domestic partnerships in the chain of ownership of the controlled foreign corporation) were treated as foreign—

(A) The controlled foreign corporation would continue to be a controlled foreign corporation; and

(B) At least one United States shareholder of the controlled foreign corporation would be treated as owning (within the meaning of section 958(a)) stock of the controlled 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 (h)(1) of this section, the term *controlled domestic partnership* means a domestic partnership that is controlled by a United States shareholder described in paragraph (h)(1)(ii)(B) of this section and persons related to the United States shareholder. For purposes of this paragraph (h)(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 in any case in which 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 (h)(2), a related person is, with respect to a United States shareholder, a person that is related to the United States shareholder within the meaning of section 267(b) or 707(b)(1).

(3) *Example*—(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. Each of CFC1, CFC2, and CFC3 is a controlled foreign corporation. USP, DPS, CFC1, CFC2, and CFC3 all use the calendar year as their taxable year. For Year 1, CFC3 has \$100x of subpart F income and \$100x of earnings and profits.

(ii) *Analysis.* DPS is a controlled domestic partnership within the meaning of paragraph (h)(2) of this section because more than 50% of the interests in its capital or profits are owned by persons related to USP within the meaning of section 267(b) (that is, CFC1 and CFC2), and thus DPS is controlled by USP and related persons. The conditions of paragraph (h)(1) of this section are satisfied because, without regard to paragraph (h) of this section, DPS is a United States shareholder that owns (within the meaning of section 958(a)) stock of CFC3, a controlled foreign corporation, and if DPS were treated as foreign, CFC3 would continue to be a controlled foreign corporation, and USP would be treated as owning (within the meaning of section 958(a)) stock of CFC3 through CFC1 and CFC2, which are both partners in DPS. Thus, under paragraph (h)(1) of this section, DPS is treated as a foreign partnership for purposes of determining the stock of CFC3 owned (within the meaning of section 958(a)) by USP. Accordingly, USP's pro rata share of CFC3's subpart F income for Year 1 is \$100x, and USP includes in its gross income \$100x under section 951(a)(1)(A). DPS is not a United States shareholder of CFC3 for purposes of sections 951 through 964.

(i) *Applicability dates.* Paragraphs (a), (b)(1)(ii), (b)(2), (e)(1)(ii)(B), and (g)(1) of this section apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. Except for paragraph (e)(1)(ii)(B) of this section, paragraph (e) of this section applies to taxable years of United States shareholders ending on or after October 3, 2018. Paragraph (h) of this section applies to taxable years of domestic partnerships ending on or after May 14, 2010.

■ **Par. 6.** Sections 1.951A–0 through 1.951A–7 are added to read as follows:

§ 1.951A–0 Outline of section 951A regulations.

This section lists the headings for §§ 1.951A–1 through 1.951A–7.

§ 1.951A–1 General provisions.

(a) *Overview*—(1) *In general.* This section and §§ 1.951A–2 through 1.951A–7 (collectively, the *section 951A regulations*) provide rules to determine a United States shareholder's income inclusion under section 951A, describe certain consequences of an income inclusion under section 951A with respect to controlled foreign corporations and their United States shareholders, and define certain terms for purposes of section 951A and the section 951A regulations. This section provides general rules for determining a United States shareholder's inclusion of global intangible low-taxed income, including a rule relating to the application of section 951A and the section 951A regulations to domestic partnerships and their partners. Section 1.951A–2 provides rules for determining a controlled foreign corporation's tested income or tested loss. Section 1.951A–3 provides rules for determining a controlled foreign corporation's qualified business asset investment. Section 1.951A–4 provides rules for determining a controlled foreign corporation's tested interest expense and tested interest income. Section 1.951A–5 provides rules relating to the treatment of the inclusion of global intangible low-taxed income for certain purposes. Section 1.951A–6 provides certain adjustments to earnings and profits and basis of a controlled foreign corporation related to a tested loss. Section 1.951A–7 provides dates of applicability.

(2) *Scope.* Paragraph (b) of this section provides the general rule requiring a United States shareholder to include in gross income its global intangible low-taxed income for a U.S. shareholder inclusion year. Paragraph (c) of this section provides rules for determining the amount of a United States shareholder's global intangible low-taxed income for the U.S. shareholder inclusion year, including a rule for the application of section 951A and the section 951A regulations to consolidated groups. Paragraph (d) of this section provides rules for determining a United States shareholder's pro rata share of certain items for purposes of determining the United States shareholder's global intangible low-taxed income. Paragraph (e) of this section provides rules for the treatment of a domestic partnership and its partners for purposes of section 951A and the section 951A regulations. Paragraph (f) of this section provides additional definitions for purposes of this section and the section 951A regulations.

(b) *Inclusion of global intangible low-taxed income.* Each person who is a United States shareholder of any controlled foreign corporation and owns section 958(a) stock of any such controlled foreign corporation includes in gross income in the U.S. shareholder inclusion year the shareholder's GILTI inclusion amount, if any, for the U.S. shareholder inclusion year.

(c) *Determination of GILTI inclusion amount*—(1) *In general.* Except as provided in paragraph (c)(4) of this section, the term *GILTI inclusion amount* means, with respect to a United States shareholder and a U.S. shareholder inclusion year, the excess (if any) of—

(i) The shareholder's net CFC tested income (as defined in paragraph (c)(2) of this section) for the year, over

(ii) The shareholder's net deemed tangible income return (as defined in paragraph (c)(3) of this section) for the year.

(2) *Definition of net CFC tested income.* The term *net CFC tested income* means, with respect to a United States shareholder and a U.S. shareholder inclusion year, the excess (if any) of—

(i) The aggregate of the shareholder's pro rata share of the tested income of each tested income CFC (as defined in § 1.951A–2(b)(1)) for a CFC inclusion year that ends with or within the U.S. shareholder inclusion year, over

(ii) The aggregate of the shareholder's pro rata share of the tested loss of each tested loss CFC (as defined in § 1.951A–2(b)(2)) for a CFC inclusion year that ends with or within the U.S. shareholder inclusion year.

(3) *Definition of net deemed tangible income return*—(i) *In general.* The term *net deemed tangible income return* means, with respect to a United States shareholder and a U.S. shareholder inclusion year, the excess (if any) of—

(A) The shareholder's deemed tangible income return (as defined in paragraph (c)(3)(ii) of this section) for the U.S. shareholder inclusion year, over

(B) The shareholder's specified interest expense (as defined in paragraph (c)(3)(iii) of this section) for the U.S. shareholder inclusion year.

(ii) *Definition of deemed tangible income return.* The term *deemed tangible income return* means, with respect to a United States shareholder and a U.S. shareholder inclusion year, 10 percent of the aggregate of the shareholder's pro rata share of the qualified business asset investment (as defined in § 1.951A–3(b)) of each tested income CFC for a CFC inclusion year that ends with or within the U.S. shareholder inclusion year.

(iii) *Definition of specified interest expense.* The term *specified interest expense* means, with respect to a United States shareholder and a U.S. shareholder inclusion year, the excess (if any) of—

(A) The aggregate of the shareholder's pro rata share of the tested interest expense (as defined in § 1.951A–4(b)(1)) of each controlled foreign corporation for a CFC inclusion year that ends with or within the U.S. shareholder inclusion year, over

(B) The aggregate of the shareholder's pro rata share of the tested interest income (as defined in § 1.951A–4(b)(2)) of each controlled foreign corporation for a CFC inclusion year that ends with or within the U.S. shareholder inclusion year.

(4) *Determination of GILTI inclusion amount for consolidated groups.* For purposes of section 951A and the section 951A regulations, a member of a consolidated group (as defined in § 1.1502–1(h)) determines its GILTI inclusion amount taking into account the rules provided in § 1.1502–51.

(d) *Determination of pro rata share*—(1) *In general.* For purposes of paragraph (c) of this section, each United States shareholder that owns section 958(a) stock of a controlled foreign corporation as of a hypothetical distribution date determines its pro rata share (if any) of each tested item of the controlled foreign corporation for the CFC inclusion year that includes the hypothetical distribution date and ends with or within the U.S. shareholder inclusion year. Except as otherwise provided in this paragraph (d), a United States shareholder's pro rata share of each tested item is determined independently of its pro rata share of each other tested item. In no case may the sum of the pro rata share of any tested item of a controlled foreign corporation for a CFC inclusion year allocated to stock under this paragraph (d) exceed the amount of such tested item of the controlled foreign corporation for the CFC inclusion year. Except as modified in this paragraph (d), a United States shareholder's pro rata share of any tested item is determined under the rules of section 951(a)(2) and § 1.951–1(b) and (e) in the same manner as those provisions apply to subpart F income. Under section 951(a)(2) and § 1.951–1(b) and (e), as modified by this paragraph (d), a United States shareholder's pro rata share of any tested item for a U.S. shareholder inclusion year is determined with respect to the section 958(a) stock of the controlled foreign corporation owned by the United States shareholder on a hypothetical distribution date with respect to a CFC inclusion year that ends with or within the U.S. shareholder inclusion year. A United States shareholder's pro rata share of any tested item is translated into United States dollars using the average exchange rate for the CFC inclusion year of the controlled foreign corporation. Paragraphs (d)(2) through (5) of this section provide rules for determining a United States shareholder's pro rata share of each tested item of a controlled foreign corporation.

(2) *Tested income*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a United States shareholder's pro rata share of the tested income of each tested income CFC for a U.S. shareholder inclusion year is determined under section 951(a)(2) and § 1.951–1(b) and (e), substituting ''tested income'' for ''subpart F income'' each place it appears, other than in § 1.951–1(e)(1)(ii)(B) and the denominator of the fraction described in § 1.951–1(b)(1)(ii)(A).

(ii) *Special rule for prior allocation of tested loss.* In any case in which tested loss has been allocated to any class of stock in a prior CFC inclusion year under paragraph (d)(4)(iii) of this section, tested income is first allocated to each such class of stock in the order of its liquidation priority to the extent of the excess (if any) of the sum of the tested loss allocated to each such class of stock for each prior CFC inclusion year under paragraph (d)(4)(iii) of this section, over the sum of the tested income allocated to each such class of stock for each prior CFC inclusion year under this paragraph (d)(2)(ii). Paragraph (d)(2)(i) of this section applies for purposes of determining a United States shareholder's pro rata share of the remainder of the tested income, except that, for purposes of the hypothetical distribution of section 951(a)(2)(A) and § 1.951–1(b)(1)(i) and (e)(1)(i), the amount of allocable earnings and profits of the tested income CFC is reduced by the amount of tested income allocated under the first sentence of this paragraph (d)(2)(ii). For an example of the application of this paragraph (d)(2), see paragraph (d)(4)(iv)(B) of this section (*Example 2*).

(3) *Qualified business asset investment*—(i) *In general.* Except as provided in paragraphs (d)(3)(ii) of this section, a United States shareholder's pro rata share of the qualified business asset investment of a tested income CFC for a U.S. shareholder inclusion year bears the same ratio to the total qualified business asset investment of the tested income CFC for the CFC inclusion year as the United States shareholder's pro rata share of the tested income of the tested income CFC for the U.S. shareholder inclusion year bears to the total tested income of the tested income CFC for the CFC inclusion year.

(ii) *Special rule for excess hypothetical tangible return*—(A) *In general.* If the tested income of a tested income CFC for a CFC inclusion year is less than the hypothetical tangible return of the tested income CFC for the CFC inclusion year, a United States shareholder's pro rata share of the qualified business asset investment of the tested income CFC for a United States shareholder inclusion year bears the same ratio to the qualified business asset investment of the tested income CFC as the United States shareholder's pro rata share of the hypothetical tangible return of the CFC for the U.S. shareholder inclusion year bears to the total hypothetical tangible return of the CFC for the CFC inclusion year.

(B) *Determination of pro rata share of hypothetical tangible return.* For purposes of paragraph (d)(3)(ii)(A) of this section, a United States shareholder's pro rata share of the hypothetical tangible return of a CFC for a CFC inclusion year is determined in the same manner as the United States shareholder's pro rata share of the tested income of the CFC for the CFC inclusion year under paragraph (d)(2) of this section by treating the amount of the hypothetical tangible return as the amount of tested income.

(C) *Definition of hypothetical tangible return.* For purposes of this paragraph (d)(3)(ii), the term *hypothetical tangible return* means, with respect to a tested income CFC for a CFC inclusion year, 10 percent of the qualified business asset investment of the tested income CFC for the CFC inclusion year.

(iii) *Examples.* The following examples illustrate the application of paragraphs (d)(2) and (3) of this section. See also § 1.951–1(e)(7)(vii) (*Example 6*) (illustrating a United States shareholder's pro rata share of tested income).

(A) *Example 1*—(*1*) *Facts.* FS, a controlled foreign corporation, has outstanding 70 shares of common stock and 30 shares of 4% nonparticipating, cumulative preferred stock with a par value of $10x per share. P Corp, a domestic corporation and a United States shareholder of FS, owns all of the common shares. Individual A, a United States citizen and a United States shareholder, owns all of the preferred shares. Individual A, FS, and P Corp use the calendar year as their taxable year. Individual A and P Corp are shareholders of FS for all of Year 4. At the beginning of Year 4, FS had no dividend arrearages with respect to its preferred stock. For Year 4, FS has $100x of earnings and profits, $120x of tested income, and no subpart F income within the meaning of section 952. FS also has $750x of qualified business asset investment for Year 4.

(*2*) *Analysis*—(*i*) *Determination of pro rata share of tested income.* For purposes of determining P Corp's pro rata share of FS's tested income under paragraph (d)(2) of this section, the amount of FS's allocable earnings and profits for purposes of the hypothetical distribution described in § 1.951–1(e)(1)(i) is $120x, the greater of its earnings and profits as determined under section 964 ($100x) and the sum of its subpart F income and tested income ($0 + $120x). Under paragraph (d)(2) of this section and § 1.951–1(e)(3), the amount of FS's allocable earnings and profits distributed in the hypothetical distribution with respect to Individual A's preferred shares is $12x (0.04 × $10x × 30) and the amount distributed with respect to P Corp's common shares is $108x ($120x − $12x). Accordingly, under paragraph (d)(2) of this section and § 1.951–1(e)(1), Individual A's pro rata share of FS's tested income is $12x, and P Corp's pro rata share of FS's tested income is $108x for Year 4.

(*ii*) *Determination of pro rata share of qualified business asset investment.* The special rule of paragraph (d)(3)(ii)(A) of this section does not apply because FS's tested income of $120x is not less than FS's hypothetical tangible return of $75x, which is 10% of FS's qualified business asset investment of $750x. Accordingly, under the general rule of paragraph (d)(3)(i) of this section, Individual A's and P Corp's respective pro rata shares of FS's qualified business asset investment bears the same ratio to FS's total qualified business asset investment as their respective pro rata shares of FS's tested income bears to FS's total tested income. Thus, Individual A's pro rata share of FS's qualified business asset investment is $75x ($750x × $12x/$120x), and P Corp's pro rata share of FS's qualified business asset investment is $675x ($750x × $108x/$120x).

(B) *Example 2*—(*1*) *Facts.* The facts are the same as in paragraph (d)(3)(iv)(A)(*1*) of this section (the facts in *Example 1* of this section), except that FS has $1,500x of qualified business asset investment for Year 4.

(*2*) *Analysis*—(*i*) *Determination of pro rata share of tested income.* The analysis and the result are the same as in paragraph (d)(3)(iv)(A)(*2*)(*i*) of this section (paragraph (i) of the analysis in *Example 1* of this section).

(*ii*) *Determination of pro rata share of qualified business asset investment.* The special rule of paragraph (d)(3)(ii)(A) of this section applies because FS's tested income of $120x is less than FS's hypothetical tangible return of $150x, which is 10% of FS's qualified business asset investment of $1,500x. Under paragraph (d)(3)(ii)(A) of this section, Individual A's and P Corp's respective pro rata shares of FS's qualified business asset investment bears the same ratio to FS's qualified business asset investment as their respective pro rata shares of the hypothetical tangible return of FS bears to the total hypothetical tangible return of FS. Under paragraph (d)(3)(ii)(B) of this section, P Corp's and Individual A's respective pro rata share of FS's hypothetical tangible return is determined under paragraph (d)(2) of this section in the same manner as their respective pro rata shares of the tested income of FS by treating the hypothetical tangible return as the amount of tested income. The amount of FS's allocable earnings and profits for purposes of the hypothetical distribution described in § 1.951–1(e)(1)(i) is $150x, the greater of its earnings and profits as determined under section 964 ($100x) and the sum of its subpart F income and hypothetical tangible return ($0 + $150x). The amount of FS's allocable earnings and profits distributed in the hypothetical distribution is $12x (.04 × $10x × 30) with respect to Individual A's preferred shares and $138x ($150x − $12x) with respect to P Corp's common shares. Accordingly, Individual A's pro rata share of FS's qualified business asset investment is $120x ($1,500x × $12x/$150x), and P Corp's pro rata share of FS's qualified business asset investment is $1,380x ($1,500x × $138x/ $150x).

(C) *Example 3*—(*1*) *Facts.* P Corp, a domestic corporation and a United States shareholder, owns 100% of the only class of stock of FS, a controlled foreign corporation, from January 1 of Year 1, until May 26 of Year 1. On May 26 of Year 1, P Corp sells all of its FS stock to R Corp, a domestic corporation that is not related to P Corp, and recognizes no gain or loss on the sale. R Corp, a United States shareholder of FS, owns 100% of the stock of FS from May 26 through December 31 of Year 1. For Year 1, FS has $50x of earnings and profits, $50x of tested income, and no subpart F income within the meaning of section 952. FS also has $1,500x of qualified business asset investment for Year 1. On May 1 of Year 1, FS distributes a $20x dividend to P Corp. P Corp, R Corp, and FS all use the calendar year as their taxable year.

(*2*) *Analysis*—(*i*) *Determination of pro rata share of tested income.* For purposes of determining R Corp's pro rata share of FS's tested income under paragraph (d)(2) of this section, the amount of FS's allocable earnings and profits for purposes of the hypothetical distribution described in § 1.951–1(e)(1)(i) is $50x, the greater of its earnings and profits as determined under section 964 ($50x) or the sum of its subpart F income and tested income ($0 + $50x). Under paragraph (d)(2) of this section and § 1.951–1(e)(1), FS's allocable earnings and profits of $50x are distributed in the hypothetical distribution pro rata to each share of stock. R Corp's pro rata share of FS's tested income for Year 1 is its pro rata share under section 951(a)(2)(A) and § 1.951–1(b)(1)(i) ($50x), reduced under section 951(a)(2)(B) and § 1.951–1(b)(1)(ii) by $20x, which is the lesser of $20x, the dividend received by P Corp during Year 1 with respect to the FS stock acquired by R Corp ($20x), multiplied by a fraction, the numerator of which is the tested income ($50x) of FS for Year 1 and the denominator of which is the sum of the subpart F income ($0) and the tested income ($50x) of FS for Year 1 ($20x × $50x/$50x), and $20x, which is P Corp's pro rata share (100%) of the amount which bears the same ratio to FS's tested income for Year 1 ($50x) as the period during which R Corp did not own (within the meaning of section 958(a)) the FS stock (146 days) bears to the entire taxable year (1 × $50x × 146/365). Accordingly, R Corp's pro rata share of tested income of FS for Year 1 is $30x ($50x − $20x).

(*ii*) *Determination of pro rata share of qualified business asset investment.* The special rule of paragraph (d)(3)(ii) of this section applies because FS's tested income of $50x is less than FS's hypothetical tangible return of $150x, which is 10% of FS's qualified business asset investment of $1,500x. Under paragraph (d)(3)(ii) of this section, R Corp's pro rata share of FS's qualified business asset investment is the amount that bears the same ratio to FS's qualified business asset investment as R Corp's pro rata share of the hypothetical tangible return of FS bears to the total hypothetical tangible return of FS. R Corp's pro rata share of FS's hypothetical tangible return is its pro rata share under section 951(a)(2)(A) and § 1.951–1(b)(1)(i) ($150x), reduced under section 951(a)(2)(B) and § 1.951–1(b)(1)(ii) by $20x, which is the lesser of $20x, the dividend received by P Corp during Year 1 with respect to the FS stock acquired by R Corp ($20x) multiplied by a fraction, the numerator of which is the hypothetical tangible return ($150x) of FS for Year 1 and the denominator of which is the sum of the subpart F income ($0) and the hypothetical tangible return ($150x) of FS for Year 1 ($20x × $150x/$150x), and $60x, which is P Corp's pro rata share (100%) of the amount which bears the same ratio to FS's hypothetical tangible return for Year 1 ($150x) as the period during which R Corp did not own (within the meaning of section 958(a)) the FS stock (146 days) bears to the entire taxable year (1 × $150x × 146/365). Accordingly, R Corp's pro rata share of the hypothetical tangible return of FS for Year 1 is $130x ($150x − $20x), and R Corp's pro rata share of FS's qualified business asset investment is $1,300x ($1,500x × $130x/ $150x).

(4) *Tested loss*—(i) *In general.* A United States shareholder's pro rata share of the tested loss of each tested loss CFC for a U.S. shareholder inclusion year is determined under section 951(a)(2) and § 1.951–1(b) and (e) with the following modifications—

(A) ''Tested loss'' is substituted for ''subpart F income'' each place it appears;

(B) For purposes of the hypothetical distribution described in section 951(a)(2)(A) and § 1.951–1(b)(1)(i) and (e)(1)(i), the amount of allocable earnings and profits of a controlled foreign corporation for a CFC inclusion year is treated as being equal to the tested loss of the tested loss CFC for the CFC inclusion year;

(C) Except as provided in paragraphs (d)(4)(ii) and (iii) of this section, the hypothetical distribution described in section 951(a)(2)(A) and § 1.951–1(b)(1)(i) and (e)(1)(i) is treated as made solely with respect to the common stock of the tested loss CFC; and

(D) In lieu of applying section 951(a)(2)(B) and § 1.951–1(b)(1)(ii), the United States shareholder's pro rata share of the tested loss allocated to section 958(a) stock of the tested loss CFC is reduced by an amount that bears the same ratio to the amount of the tested loss as the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire taxable year.

(ii) *Special rule in case of accrued but unpaid dividends.* If a tested loss CFC's earnings and profits that have accumulated since the issuance of preferred shares are reduced below the amount necessary to satisfy any accrued but unpaid dividends with respect to such preferred shares, then the amount by which the tested loss reduces the earnings and profits below the amount necessary to satisfy the accrued but unpaid dividends is allocated in the hypothetical distribution described in section 951(a)(2)(A) and § 1.951–1(b)(1)(i) and (e)(1)(i) to the preferred stock of the tested loss CFC and the remainder of the tested loss is allocated in the hypothetical distribution to the common stock of the tested loss CFC.

(iii) *Special rule for stock with no liquidation value.* If a tested loss CFC's common stock has a liquidation value of zero and there is at least one other class of equity with a liquidation preference relative to the common stock, then the tested loss is allocated in the hypothetical distribution described in section 951(a)(2)(A) and § 1.951–1(b)(1)(i) and (e)(1)(i) to the most junior class of equity with a positive liquidation value to the extent of such liquidation value. Thereafter, tested loss is allocated to the next most junior class of equity to the extent of its liquidation value and so on. All determinations of liquidation value are to be made as of the beginning of the CFC inclusion year of the tested loss CFC.

(iv) *Examples.* The following examples illustrate the application of this paragraph (d)(4). See also § 1.951–1(e)(7)(viii) (*Example 7*) (illustrating a United States shareholder's pro rata share of subpart F income and tested loss).

(A) *Example 1*—(*1*) *Facts.* FS, a controlled foreign corporation, has outstanding 70 shares of common stock and 30 shares of 4% nonparticipating, cumulative preferred stock with a par value of $10x per share. P Corp, a domestic corporation and a United States shareholder of FS, owns all of the common shares. Individual A, a United States citizen and a United States shareholder, owns all of the preferred shares. FS, Individual A, and P Corp all use the calendar year as their taxable year. Individual A and P Corp are shareholders of FS for all of Year 5. At the beginning of Year 5, FS had earnings and profits of $120x, which accumulated after the issuance of the preferred stock. At the end of Year 5, the accrued but unpaid dividends with respect to the preferred stock are $36x. For Year 5, FS has a $100x tested loss, and no other items of income, gain, deduction or loss. At the end of Year 5, FS has earnings and profits of $20x.

(*2*) *Analysis.* FS is a tested loss CFC for Year 5. Before taking into account the tested loss in Year 5, FS had sufficient earnings and profits to satisfy the accrued but unpaid dividends of $36x. The amount of the reduction in earnings below the amount necessary to satisfy the accrued but unpaid dividends attributable to the tested loss is $16x ($36x − ($120x − $100x)). Accordingly, under paragraph (d)(4)(ii) of this section, $16x of the tested loss is allocated to Individual A's preferred stock in the hypothetical distribution described in section 951(a)(2)(A) and § 1.951–1(b)(1)(i) and (e)(1)(i), and $84x ($100x − $16x) of the tested loss is allocated to P Corp's common shares in the hypothetical distribution.

(B) *Example 2*—(*1*) *Facts.* FS, a controlled foreign corporation, has outstanding 100 shares of common stock and 50 shares of 4% nonparticipating, cumulative preferred stock with a par value of $100x per share. P Corp, a domestic corporation and a United States shareholder of FS, owns all of the common shares. Individual A, a United States citizen and a United States shareholder, owns all of the preferred shares. FS, Individual A, and P Corp all use the calendar year as their taxable year. Individual A and P Corp are shareholders of FS for all of Year 1 and Year 2. At the beginning of Year 1, the common stock has no liquidation value and the preferred stock has a liquidation value of $5,000x and no accrued but unpaid dividends. In Year 1, FS has a tested loss of $1,000x and no other items of income, gain, deduction, or loss. In Year 2, FS has tested income of $3,000x and no other items of income, gain, deduction, or loss. FS has earnings and profits of $3,000x for Year 2. At the end of Year 2, FS has accrued but unpaid dividends of $400x with respect to the preferred stock, the sum of $200x for Year 1 (0.04 × $100x × 50) and $200x for Year 2 (0.04 × $100x × 50).

(*2*) *Analysis*—(*i*) *Year 1.* FS is a tested loss CFC in Year 1. The common stock of FS has liquidation value of zero, and the preferred stock has a liquidation preference relative to the common stock. The tested loss ($1,000x) does not exceed the liquidation value of the preferred stock ($5,000x). Accordingly, under paragraph (d)(4)(iii) of this section, the tested loss is allocated to the preferred stock in the hypothetical distribution described in section 951(a)(2)(A) and § 1.951–1(b)(1)(i) and (e)(1)(i). Individual A's pro rata share of the tested loss is $1,000x, and P Corp's pro rata share of the tested loss is $0.

(*ii*) *Year 2.* FS is a tested income CFC in Year 2. Because $1,000x of tested loss was allocated to the preferred stock in Year 1 under paragraph (d)(4)(iii) of this section, the first $1,000x of tested income in Year 2 is allocated to the preferred stock under paragraph (d)(2)(ii) of this section. P Corp's and Individual A's pro rata shares of the remaining $2,000x of tested income are determined under the general rule of paragraph (d)(2)(i) of this section, except that for purposes of the hypothetical distribution the amount of FS's allocable earnings and profits is reduced by the tested income allocated under paragraph (d)(2)(ii) of this section to $2,000x ($3,000x − $1,000x). Accordingly, under paragraph (d)(2)(i) of this section and § 1.951–1(e), the amount of FS's allocable earnings and profits distributed in the hypothetical distribution with respect to Individual A's preferred stock is $400x ($400x of accrued but unpaid dividends) and with respect to P Corp's common stock is $1,600x ($2,000x − $400x). Individual A's pro rata share of the tested income is $1,400x ($1,000x + $400x), and P Corp's pro rata share of the tested income is $1,600x.

(5) *Tested interest expense.* A United States shareholder's pro rata share of tested interest expense of a controlled foreign corporation for a U.S. shareholder inclusion year is equal to the amount by which the tested interest expense reduces the shareholder's pro rata share of tested income of the controlled foreign corporation for the U.S. shareholder inclusion year, increases the shareholder's pro rata share of tested loss of the controlled foreign corporation for the U.S. shareholder inclusion year, or both.

(6) *Tested interest income.* A United States shareholder's pro rata share of tested interest income of a controlled foreign corporation for a U.S. shareholder inclusion year is equal to the amount by which the tested interest income increases the shareholder's pro rata share of tested income of the controlled foreign corporation for the U.S. shareholder inclusion year, reduces the shareholder's pro rata share of tested loss of the controlled foreign corporation for the U.S. shareholder inclusion year, or both.

(e) *Treatment of domestic partnerships*—(1) *In general.* For purposes of section 951A and the section 951A regulations, and for purposes of any other provision that applies by reference to section 951A or the section 951A regulations, a domestic partnership is not treated as owning stock of a foreign corporation within the meaning of section 958(a). When the preceding sentence applies, a domestic partnership is treated in the same manner as a foreign partnership under section 958(a)(2) for purposes of determining the persons that own stock of the foreign corporation within the meaning of section 958(a).

(2) *Non-application for determination of status as United States shareholder and controlled foreign corporation.* Paragraph (e)(1) of this section does not apply for purposes of determining whether any United States person is a United States shareholder (as defined in section 951(b)), whether any United States shareholder is a controlling domestic shareholder (as defined in § 1.964–1(c)(5)), or whether any foreign corporation is a controlled foreign corporation (as defined in section 957(a)).

(3) *Examples.* The following examples illustrate the application of this paragraph (e).

(i) *Example 1*—(A) *Facts.* USP, a domestic corporation, and Individual A, a United States citizen unrelated to USP, own 95% and 5%, respectively, of PRS, a domestic partnership. PRS owns 100% of the single class of stock of FC, a foreign corporation.

(B) *Analysis*—(*1*) *CFC and United States shareholder determinations.* Under paragraph (e)(2) of this section, the determination of whether PRS, USP, and Individual A (each a United States person) are United States shareholders of FC and whether FC is a controlled foreign corporation is made without regard to paragraph (e)(1) of this section. PRS, a United States person, owns 100% of the total combined voting power or value of the FC stock within the meaning of section 958(a). Accordingly, PRS is a United States shareholder under section 951(b), and FC is a controlled foreign corporation under section 957(a). USP is a United States shareholder of FC because it owns 95% of the total combined voting power or value of the FC stock under sections 958(b) and 318(a)(2)(A). Individual A, however, is not a United States shareholder of FC because Individual A owns only 5% of the total combined voting power or value of the FC stock under sections 958(b) and 318(a)(2)(A).

(*2*) *Application of section 951A.* Under paragraph (e)(1) of this section, for purposes of determining a GILTI inclusion amount under section 951A and paragraph (b) of this section, PRS is not treated as owning (within the meaning of section 958(a)) the FC stock; instead, PRS is treated in the same manner as a foreign partnership for purposes of determining the FC stock owned by USP and Individual A under section 958(a)(2). Therefore, for purposes of determining the GILTI inclusion amount of USP and Individual A, USP is treated as owning 95% of the FC stock under section 958(a), and Individual A is treated as owning 5% of the FC stock under section 958(a). USP is a United States shareholder of FC, and therefore USP determines its pro rata share of any tested item of FC based on its ownership of section 958(a) stock of FC. However, because Individual A is not a United States shareholder of FC, Individual A does not have a pro rata share of any tested item of FC.

(ii) *Example 2*—(A) *Facts.* USP, a domestic corporation, and Individual A, a United States citizen, own 90% and 10%, respectively, of PRS1, a domestic partnership. PRS1 and Individual B, a nonresident alien individual, own 90% and 10%, respectively, of PRS2, a domestic partnership. PRS2 owns 100% of the single class of stock of FC, a foreign corporation. USP, Individual A, and Individual B are unrelated to each other.

(B) *Analysis*—(*1*) *CFC and United States shareholder determination.* Under paragraph (e)(2) of this section, the determination of whether PRS1, PRS2, USP, and Individual A (each a United States person) are United States shareholders of FC and whether FC is a controlled foreign corporation is made without regard to paragraph (e)(1) of this section. PRS2 owns 100% of the total combined voting power or value of the FC stock within the meaning of section 958(a). Accordingly, PRS2 is a United States shareholder under section 951(b), and FC is a controlled foreign corporation under section 957(a). Under sections 958(b) and 318(a)(2)(A), PRS1 is treated as owning 90% of the FC stock owned by PRS2. Accordingly, PRS1 is a United States shareholder under section 951(b). Further, under section 958(b)(2), PRS1 is treated as owning 100% of the FC stock for purposes of determining the FC stock treated as owned by USP and Individual A under section 318(a)(2)(A). Therefore, USP is treated as owning 90% of the FC stock under section 958(b) (100% × 100% × 90%), and Individual A is treated as owning 10% of the FC stock under section 958(b) (100% × 100% × 10%). Accordingly, both USP and Individual A are United States shareholders of FC under section 951(b).

(*2*) *Application of section 951A.* Under paragraph (e)(1) of this section, for purposes of determining a GILTI inclusion amount under section 951A and paragraph (b) of this section, PRS1 and PRS2 are not treated as owning (within the meaning of section 958(a)) the FC stock; instead, PRS1 and PRS2 are treated in the same manner as foreign partnerships for purposes of determining the FC stock owned by USP and Individual A under section 958(a)(2). Therefore, for purposes of determining the GILTI inclusion of USP and Individual A, USP is treated as owning 81% (100% × 90% × 90%) of the FC stock under section 958(a), and Individual A is treated as owning 9% (100% × 90% × 10%) of the FC stock under section 958(a). Because USP and Individual A are both United States shareholders of FC, USP and Individual A determine their respective pro rata shares of any tested item of FC based on their ownership of section 958(a) stock of FC.

(f) *Definitions.* This paragraph (f) provides additional definitions that apply for purposes of this section and the section 951A regulations. Other definitions relevant to the section 951A regulations are included in §§ 1.951A–2 through 1.951A–4.

(1) *CFC inclusion year.* The term *CFC inclusion year* means any taxable year of a foreign corporation beginning after December 31, 2017, at any time during which the corporation is a controlled foreign corporation.

(2) *Controlled foreign corporation.* The term *controlled foreign corporation* has the meaning set forth in section 957(a).

(3) *Hypothetical distribution date.* The term *hypothetical distribution date* has the meaning set forth in § 1.951–1(e)(1)(i).

(4) *Section 958(a) stock.* The term *section 958(a) stock* means stock of a controlled foreign corporation owned (directly or indirectly) by a United States shareholder within the meaning of section 958(a), as modified by paragraph (e)(1) of this section.

(5) *Tested item.* The term *tested item* means tested income, tested loss, qualified business asset investment, tested interest expense, or tested interest income.

(6) *United States shareholder.* The term *United States shareholder* has the meaning set forth in section 951(b).

(7) *U.S. shareholder inclusion year.* The term *U.S. shareholder inclusion year* means any taxable year of a United States shareholder in which or with which a CFC inclusion year of a controlled foreign corporation ends.

§ 1.951A–2 Tested income and tested loss.

(a) *Scope.* This section provides rules for determining the tested income or tested loss of a controlled foreign corporation for purposes of determining a United States shareholder's net CFC tested income under § 1.951A–1(c)(2). Paragraph (b) of this section provides definitions related to tested income and tested loss. Paragraph (c) of this section provides rules for determining the gross tested income of a controlled foreign corporation and the deductions that are properly allocable to gross tested income.

(b) *Definitions related to tested income and tested loss*—(1) *Tested income and tested income CFC.* The term *tested income* means the excess (if any) of a controlled foreign corporation's gross tested income for a CFC inclusion year, over the allowable deductions (including taxes) properly allocable to the gross tested income for the CFC inclusion year (a controlled foreign corporation with tested income for a CFC inclusion year, a *tested income CFC*).

(2) *Tested loss and tested loss CFC.* The term *tested loss* means the excess (if any) of a controlled foreign corporation's allowable deductions (including taxes) properly allocable to gross tested income (or that would be allocable to gross tested income if there were gross tested income) for a CFC inclusion year, over the gross tested income of the controlled foreign corporation for the CFC inclusion year (a controlled foreign corporation without tested income for a CFC inclusion year, a *tested loss CFC*).

(c) *Rules relating to the determination of tested income and tested loss*—(1) *Definition of gross tested income.* The term *gross tested income* means the gross income of a controlled foreign corporation for a CFC inclusion year determined without regard to—

(i) Items of income described in section 952(b),

(ii) Gross income taken into account in determining the subpart F income of the corporation,

(iii) Gross income excluded from the foreign base company income (as defined in section 954) or the insurance income (as defined in section 953) of the corporation solely by reason of an election made under section 954(b)(4) and § 1.954–1(d)(5),

(iv) Dividends received by the corporation from related persons (as defined in section 954(d)(3)), and

(v) Foreign oil and gas extraction income (as defined in section 907(c)(1)) of the corporation.

(2) *Determination of gross income and allowable deductions*—(i) *In general.* For purposes of determining tested income and tested loss, the gross income and allowable deductions of a controlled foreign corporation for a CFC inclusion year are determined under the rules of § 1.952–2 for determining the subpart F income of the controlled foreign corporation, except, for a controlled foreign corporation which is engaged in the business of reinsuring or issuing insurance or annuity contracts and which, if it were a domestic corporation engaged only in such business, would be taxable as an insurance company to which subchapter

L of chapter 1 of the Code applies, substituting ''the rules of sections 953 and 954(i)'' for ''the principles of §§ 1.953–4 and 1.953–5'' in § 1.952–2(b)(2).

(ii) *Deemed payment under section 367(d).* The allowable deductions of a controlled foreign corporation include a deemed payment of the controlled foreign corporation under section 367(d)(2)(A).

(3) *Allocation of deductions to gross tested income.* Except as provided in paragraph (c)(5) of this section, any deductions of a controlled foreign corporation allowable under paragraph (c)(2) of this section are allocated and apportioned to gross tested income under the principles of section 954(b)(5) and § 1.954–1(c), by treating gross tested income that falls within a single separate category (as defined in § 1.904–5(a)) as a single item of gross income, separate and in addition to the items set forth in § 1.954–1(c)(1)(iii). Losses in other separate categories of income resulting from the application of § 1.954–1(c)(1)(i) cannot reduce any separate category of gross tested income, and losses in a separate category of gross tested income cannot reduce income in a category of subpart F income. In addition, deductions of a controlled foreign corporation that are allocated and apportioned to gross tested income under this paragraph (c)(3) are not taken into account for purposes of determining a qualified deficit as defined in section 952(c)(1)(B)(ii).

(4) *Gross income taken into account in determining subpart F income*—(i) *In general.* Except as provided in paragraph (c)(4)(iii) of this section, gross income of a controlled foreign corporation for a CFC inclusion year described in section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section is gross income described in paragraphs (c)(4)(ii)(A) through (E) of this section.

(ii) *Items of gross income included in subpart F income*—(A) *Insurance income.* Gross income described in this paragraph (c)(4)(ii)(A) is any item of gross income included in the insurance income (adjusted net insurance income as defined in § 1.954–1(a)(6)) of the controlled foreign corporation for the CFC inclusion year.

(B) *Foreign base company income.* Gross income described in this paragraph (c)(4)(ii)(B) is any item of gross income included in the foreign base company income (adjusted net foreign base company income as defined in § 1.954–1(a)(5)) of the controlled foreign corporation for the CFC inclusion year.

(C) *International boycott income.* Gross income described in this paragraph (c)(4)(ii)(C) is the product of the gross income of the controlled foreign corporation for the CFC inclusion year that gives rise to the income described in section 952(a)(3)(A) multiplied by the international boycott factor described in section 952(a)(3)(B).

(D) *Illegal bribes, kickbacks, or other payments.* Gross income described in this paragraph (c)(4)(ii)(D) is the sum of the amounts of the controlled foreign corporation for the CFC inclusion year described in section 952(a)(4).

(E) *Income earned in certain foreign countries.* Gross income described in this paragraph (c)(4)(ii)(E) is income of the controlled foreign corporation for the CFC inclusion year described in section 952(a)(5).

(iii) *Coordination rules*—(A) *Coordination with E&P limitation.* Gross income of a controlled foreign corporation for a CFC inclusion year described in section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section includes any item of gross income that is excluded from subpart F income of the controlled foreign corporation for the CFC inclusion year, or that is otherwise excluded from the amount included under section 951(a)(1)(A) in the gross income of a United States shareholder of the controlled foreign corporation for the U.S. shareholder inclusion year in which or with which the CFC inclusion year ends, under section 952(c)(1) and § 1.952–1(c), (d), or (e).

(B) *Coordination with E&P recapture.* Gross income of a controlled foreign corporation for a CFC inclusion year described in section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section does not include any item of gross income that results in the recharacterization of earnings and profits as subpart F income of the controlled foreign corporation for the CFC inclusion year under section 952(c)(2) and § 1.952–1(f)(2).

(C) *Coordination with full inclusion rule and high tax exception.* Gross income of a controlled foreign corporation for a CFC inclusion year described in section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section does not include full inclusion foreign base company income that is excluded from subpart F income under § 1.954–1(d)(6). Full inclusion foreign base company income that is excluded from subpart F income under § 1.954–1(d)(6) is also not included in gross income of a controlled foreign corporation for a CFC inclusion year described in section 951A(c)(2)(A)(i)(III) and paragraph (c)(1)(iii) of this section.

(iv) *Examples.* The following examples illustrate the application of this paragraph (c)(4).

(A) *Example 1*—(*1*) *Facts.* A Corp, a domestic corporation, owns 100% of the single class of stock of FS, a controlled foreign corporation. Both A Corp and FS use the calendar year as their taxable year. In Year 1, FS has passive category foreign personal holding company income of $100x, a general category loss in foreign oil and gas extraction income of $100x, and earnings and profits of $0. FS has no other income. In Year 2, FS has general category gross income of $100x and earnings and profits of $100x. Without regard to section 952(c)(2), in Year 2 FS has no income described in any of the categories of income excluded from gross tested income in paragraphs (c)(1)(i) through (v) of this section. FS has no allowable deductions properly allocable to gross tested income for Year 2.

(*2*) *Analysis*—(*i*) *Year 1.* As a result of the earnings and profits limitation of section 952(c)(1)(A), FS has no subpart F income in Year 1, and A Corp has no inclusion with respect to FS under section 951(a)(1)(A). Under paragraph (c)(4)(ii)(A) of this section, gross income described in section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section includes any item of gross income excluded from the subpart F income of FS for Year 1 under section 952(c)(1)(A) and § 1.952–1(c). Therefore, the $100x foreign personal holding company income of FS in Year 1 is excluded from gross tested income by reason of section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section, and FS has no gross tested income in Year 1.

(*ii*) *Year 2.* In Year 2, under section 952(c)(2) and § 1.952–1(f)(2), FS's general category earnings and profits ($100x) in excess of its subpart F income ($0) give rise to the recharacterization of its passive category recapture account as subpart F income. Therefore, FS has passive category subpart F income of $100x in Year 2, and A Corp has an inclusion of $100x with respect to FS under section 951(a)(1)(A). Under paragraph (c)(4)(ii)(B) of this section, gross income described in section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section does not include any item of gross income that results in the recharacterization of earnings and profits as subpart F income in FS's taxable year under section 952(c)(2) and § 1.952–1(f)(2). Accordingly, the $100x of general category gross income of FS in Year 2 is not excluded from gross tested income by reason of section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section, and FS has $100x of general category gross tested income in Year 2.

(B) *Example 2*—(*1*) *Facts.* A Corp, a domestic corporation, owns 100% of the single class of stock of FC1 and FC2, controlled foreign corporations. A Corp, FC1, and FC2 use the calendar year as their taxable year. In Year 1, FC1 has gross income of $290x from product sales to unrelated persons within its country of incorporation, gross interest income of $10x (an amount that is less than $1,000,000) that does not qualify for an exception to foreign personal holding company income, and earnings and profits of $300x. In Year 1, FC2 has gross income of $45x for performing consulting services within its country of incorporation for unrelated persons, gross interest income of $150x (an amount that is not less than $1,000,000) that does not qualify for an exception to foreign personal holding company income, and earnings and profits of $195x.

(*2*) *Analysis*—(*i*) *FC1.* In Year 1, by application of the de minimis rule of section 954(b)(3)(A) and § 1.954–1(b)(1)(i), the $10x of gross interest income earned by FC1 is not treated as foreign base company income ($10x of gross foreign base company income is less than $15x, the lesser of 5% of $300x, FC's total gross income for Year 1, or $1,000,000). Accordingly, FC1 has no subpart F income in Year 1, and A Corp has no inclusion with respect to FC1 under section 951(a)(1)(A). Under paragraph (c)(4)(i) of this section, gross income described in section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section is any item of gross income included in foreign base company income, and thus gross income described in section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section does not include any item of gross income excluded from foreign base company income under the de minimis rule in section 954(b)(3)(A) and § 1.954–1(b)(1)(i). Accordingly, FS's $10x of gross interest income in Year 1 is not excluded from gross tested income by reason of section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section, and FC1 has $300x ($290x of gross sales income and $10x of gross interest income) of gross tested income in Year 1.

(*ii*) *FC2.* In Year 1, by application of the full inclusion rule in section 954(b)(3)(B) and § 1.954–1(b)(1)(ii), the $45x of gross income earned by FC2 for performing consulting services within its country of incorporation for unrelated persons is treated as foreign base company income ($150x of gross foreign base company income exceeds $136.5x, which is 70% of $195x, FC2's total gross income for Year 1). Therefore, FC2 has $195x of foreign base company income in Year 1, including $45x of full inclusion foreign base company income as defined in § 1.954–1(b)(2), and A Corp has an inclusion of $195x with respect to FC2 under section 951(a)(1)(A). Under paragraph (c)(4)(i) of this section, gross income described in section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section is any item of gross income included in foreign base company income, and thus gross income described in section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section includes any item of gross income included as foreign base company income under the full inclusion rule in section 954(b)(3)(B) and § 1.954–1(b)(1)(ii). Accordingly, FC2's $45x of gross services income and its $150x of gross interest income in Year 1 are excluded from gross tested income by reason of section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section, and FC2 has no gross tested income in Year 1.

(C) *Example 3*—(*1*) *Facts.* A Corp, a domestic corporation, owns 100% of the single class of stock of FS, a controlled foreign corporation. A Corp and FS use the calendar year as their taxable year. In Year 1, FS has gross income of $1,000x, of which $720x is general category foreign base company sales income and $280x is general category income from sales within its country of incorporation; FS has expenses of $650x (including creditable foreign income taxes), of which $500x are allocated and apportioned to foreign base company sales income and $150x are allocated and apportioned to sales income from sales within FS's country of incorporation; and FS has earnings and profits of $350x for Year 1. Foreign income tax of $55x is considered imposed on the $220x ($720x − $500x) of net foreign base company sales income, and $26x is considered imposed on the $130x ($280x − $150x) of net income from sales within FS's country of operation. The maximum rate of tax in section 11 for the taxable year is 21%, and FS elects the high tax exception of section 954(b)(4) under § 1.954–1(d)(1) for Year 1 for its foreign base company sales income. In a prior taxable year, FS had losses with respect to income other than foreign base company or insurance income that, by reason of the limitation in section 952(c)(1)(A), reduced the subpart F income of FS (consisting entirely of foreign source general category income) by $600x; as of the beginning of Year 1, such amount has not been recharacterized as subpart F income in a subsequent taxable year under section 952(c)(2).

(*2*) *Analysis*—(*i*) *Foreign base company income.* In Year 1, by application of the full inclusion rule in section 954(b)(3)(B) and § 1.954–1(b)(1)(ii), the $280x of gross income earned by FS for sales within its country of incorporation is treated as foreign base company income ($720x of gross foreign base company income exceeds $700x, which is 70% of $1,000x, FS's total gross income for the taxable year). However, the $220x of foreign base company sales income qualifies for the high tax exception of section 954(b)(4) and § 1.954–1(d)(1), because the effective rate of tax with respect to the net foreign base company sales income ($220x) is 20% ($55x/($220x + $55x)) which is greater than 18.9% (90% of 21%, the maximum rate of tax in section 11 for the taxable year). Because the $220x of net foreign base company sales income qualifies for the high tax exception of section 954(b)(4) and § 1.954–1(d)(1), the $130x of full inclusion foreign base company income is also excluded from subpart F income under § 1.954–1(d)(6).

(*ii*) *Recapture of subpart F income.* Under section 952(c)(2) and § 1.952–1(f)(2), FS's general category earnings and profits ($350x) in excess of its subpart F income ($0) give rise to the recharacterization of its general category recapture account ($600x) as subpart F income to the extent of current year earnings and profits. Therefore, FS has general category subpart F income of $350x in Year 1, and A Corp has an inclusion of $350x with respect to FS under section 951(a)(1)(A).

(*iii*) *Gross tested income.* The $720x of gross foreign base company income is excluded from gross tested income under section 951A(c)(2)(A)(i)(III) and paragraph (c)(1)(iii) of this section. However, the $280x of gross sales income earned from sales within FS's country of incorporation is not excluded from gross tested income under either section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section or section 951A(c)(2)(A)(i)(III) and paragraph (c)(1)(iii) of this section. Under paragraph (c)(4)(ii)(B) of this section, the $280x of gross sales income earned from sales within FS's country of incorporation is not excluded from gross tested income under section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section, because gross income described in paragraph (c)(1)(ii) of this section does not include any item of gross income that results in the recharacterization of earnings and profits as subpart F income under section 952(c)(2) and § 1.952–1(f)(2). Further, under paragraph (c)(4)(iii) of this section, the $280x of gross sales income earned from sales within FS's country of incorporation is not excluded from gross tested income under either section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section or section 951A(c)(2)(A)(i)(III) and paragraph (c)(1)(iii) of this section, because gross income described in section 951A(c)(2)(A)(i)(II) and paragraph (c)(1)(ii) of this section or section 951A(c)(2)(A)(i)(III) and paragraph (c)(1)(iii) of this section does not include full inclusion foreign base company income that is excluded from subpart F income under § 1.954–1(d)(6). Accordingly, FS has $280x of gross tested income for Year 1.

(5) *Allocation of deduction or loss attributable to disqualified basis*—(i) *In general.* A deduction or loss attributable to disqualified basis is allocated and apportioned solely to residual CFC gross income, and any depreciation, amortization, or cost recovery allowances attributable to disqualified basis is not properly allocable to property produced or acquired for resale under section 263, 263A, or 471.

(ii) *Determination of deduction or loss attributable to disqualified basis.* Except as otherwise provided in this paragraph (c)(5)(ii), in the case of a depreciation or amortization deduction with respect to property with disqualified basis and adjusted basis other than disqualified basis, the deduction or loss is treated as attributable to the disqualified basis in the same proportion that the disqualified basis bears to the total adjusted basis in the property. In the case of a loss from a taxable sale or exchange of property with disqualified basis and adjusted basis other than disqualified basis, the loss is treated as attributable to disqualified basis to the extent thereof.

(iii) *Definitions.* The following definitions apply for purposes of this paragraph (c)(5).

(A) *Disqualified basis.* The term *disqualified basis* has the meaning set forth in § 1.951A–3(h)(2)(ii).

(B) *Residual CFC gross income.* The term *residual CFC gross income* means gross income other than gross tested income, gross income taken into account in determining subpart F income, or gross income that is effectively connected, or treated as effectively connected, with the conduct of a trade or business in the United States (as described in § 1.882–4(a)(1)).

(iv) *Examples.* The following examples illustrate the application of this paragraph (c)(5).

(A) *Example 1: Sale of intangible property during the disqualified period*—(*1*) *Facts.* USP, a domestic corporation, owns all of the stock in CFC1 and CFC2, each a controlled foreign corporation. Both USP and CFC2 use the calendar year as their taxable year. CFC1 uses a taxable year ending November 30. On November 1, 2018, before the start of its first CFC inclusion year, CFC1 sells Asset A to CFC2 in exchange for $100x of cash. Asset A is intangible property that is amortizable under section 197. Immediately before the sale, the adjusted basis in Asset A is $20x, and CFC1 recognizes $80x of gain as a result of the sale ($100x − $20x). CFC1's gain is not subject to U.S. tax or taken into account in determining an inclusion to USP under section 951(a)(1)(A).

(*2*) *Analysis.* The sale by CFC1 is a disqualified transfer (within the meaning of § 1.951A–3(h)(2)(ii)(C)(*2*)) because it is a transfer of property in which gain was recognized by CFC1, CFC1 and CFC2 are related persons, and the transfer occurs during the disqualified period (within the meaning of § 1.951A–3(h)(2)(ii)(C)(*1*)). The disqualified basis in Asset A is $80x, the excess of CFC2's adjusted basis in Asset A immediately after the disqualified transfer ($100x), over the sum of CFC1's basis in Asset A immediately before the transfer ($20x) and the qualified gain amount (as defined in § 1.951A–3(h)(2)(ii)(C)(*3*)) ($0). Accordingly, under paragraph (c)(5)(i) of this section, any deduction or loss of CFC2 attributable to the disqualified basis is allocated and apportioned solely to residual CFC gross income of CFC2 and, therefore, is not taken into account in determining the tested income, tested loss, subpart F income, or effectively connected income of CFC2 for any CFC inclusion year.

(B) *Example 2: Related party transfer after the disqualified period; gain recognition*—(*1*) *Facts.* The facts are the same as in paragraph (c)(5)(iv)(A)(*1*) of this section (the facts in *Example 1*), except that, on November 30, 2020, CFC2 sells Asset A to CFC3, a controlled foreign corporation wholly-owned by CFC2, in exchange for $120x of cash. Immediately before the sale, the adjusted basis in Asset A is $90x, $72x of which is disqualified basis. The gain recognized by CFC2 on the sale of Asset A is not described in paragraphs (c)(1)(i) through (v) of this section.

(*2*) *Analysis.* Paragraph (c)(5)(i) of this section does not apply to the sale of Asset A from CFC2 to CFC3 because the sale does not give rise to a deduction or loss attributable to disqualified basis, but instead gives rise to gain. Therefore, CFC2 recognizes $30x ($120x − $90x) of gain that is included in gross tested income for its CFC inclusion year ending November 30, 2019. Under § 1.951A–3(h)(2)(ii)(B)(*1*)(*ii*), because CFC2 sold Asset A to CFC3, a related person, and CFC2 did not recognize a deduction or loss on the sale, the disqualified basis in Asset A is not reduced or eliminated by reason of the sale. Accordingly, under paragraph (c)(5)(i) of this section, any deduction or loss of CFC3 attributable to the $72x of disqualified basis in Asset A is allocated and apportioned solely to residual CFC gross income of CFC3.

(C) *Example 3: Related party transfer after the disqualified period; loss recognition*—(*1*) *Facts.* The facts are the same as in paragraph (c)(5)(iv)(B)(*1*) of this section (the facts in *Example 2*), except that CFC2 sells Asset A to CFC3 in exchange for $70x of cash.

(*2*) *Analysis.* Under paragraph (c)(5)(ii) of this section, the $20x loss recognized by CFC2 on the sale is attributable to disqualified basis, to the extent thereof, notwithstanding that the loss may be deferred under section 267(f). Thus, under paragraph (c)(5)(i) of this section, the loss is allocated and apportioned solely to residual CFC gross income of CFC2 in the CFC inclusion year in which the loss is taken into account pursuant to section 267(f). Under § 1.951A–3(h)(2)(ii)(B)(*1*)(*ii*), the disqualified basis in Asset A is reduced by $20x, the loss of CFC2 that is attributable to disqualified basis under paragraph (c)(5)(ii) of this section. Accordingly, under paragraph (c)(5)(i) of this section, any deduction or loss of CFC3 attributable to the remaining $52x of disqualified basis in Asset A is allocated and apportioned solely to residual CFC gross income of CFC3.

§ 1.951A–3 Qualified business asset investment.

(a) *Scope.* This section provides rules for determining the qualified business asset investment of a controlled foreign corporation for purposes of determining a United States shareholder's deemed tangible income return under § 1.951A–1(c)(3)(ii). Paragraph (b) of this section defines qualified business asset investment. Paragraph (c) of this section defines tangible property and specified tangible property. Paragraph (d) of this section provides rules for determining the portion of tangible property that is specified tangible property when the property is used in the production of both gross tested income and gross income that is not gross tested income. Paragraph (e) of this section provides rules for determining the adjusted basis in specified tangible property. Paragraph (f) of this section provides rules for determining qualified business asset investment of a tested income CFC with a short taxable year. Paragraph (g) of this section provides rules for increasing the qualified business asset investment of a tested income CFC by reason of property owned by a partnership. Paragraph (h) of this section provides anti-avoidance rules that disregard the basis in property transferred in certain transactions when determining the qualified business asset investment of a tested income CFC.

(b) *Qualified business asset investment.* The term *qualified business asset investment* means the average of a tested income CFC's aggregate adjusted bases as of the close of each quarter of a CFC inclusion year in specified tangible property that is used in a trade or business of the tested income CFC and is of a type with respect to which a deduction is allowable under section 167. In the case of partially depreciable property, only the depreciable portion of the property is of a type with respect to which a deduction is allowable under section 167. A tested loss CFC has no qualified business asset investment.

(c) *Specified tangible property*—(1) *In general.* The term *specified tangible property* means, with respect to a tested income CFC and a CFC inclusion year, tangible property of the tested income CFC used in the production of gross tested income for the CFC inclusion year. For purposes of the preceding sentence, tangible property of a tested income CFC is used in the production of gross tested income for a CFC inclusion year if some or all of the depreciation or cost recovery allowance with respect to the tangible property is either allocated and apportioned to the gross tested income of the tested income CFC for the CFC inclusion year under § 1.951A–2(c)(3) or capitalized to inventory or other property held for sale, some or all of the gross income or loss from the sale of which is taken into account in determining tested income of the tested income CFC for the CFC inclusion year. None of the tangible property of a tested loss CFC is specified tangible property.

(2) *Tangible property.* The term *tangible property* means property for which the depreciation deduction provided by section 167(a) is eligible to be determined under section 168 without regard to section 168(f)(1), (2), or (5), section 168(k)(2)(A)(i)(II), (IV), or (V), and the date placed in service.

(d) *Dual use property*—(1) *In general.* The amount of the adjusted basis in dual use property of a tested income CFC for a CFC inclusion year that is treated as adjusted basis in specified tangible property for the CFC inclusion year is the average of the tested income CFC's adjusted basis in the property multiplied by the dual use ratio with respect to the property for the CFC inclusion year.

(2) *Definition of dual use property.* The term *dual use property* means, with respect to a tested income CFC and a CFC inclusion year, specified tangible property of the tested income CFC that is used in both the production of gross

tested income and the production of gross income that is not gross tested income for the CFC inclusion year. For purposes of the preceding sentence, specified tangible property of a tested income CFC is used in the production of gross tested income and the production of gross income that is not gross tested income for a CFC inclusion year if less than all of the depreciation or cost recovery allowance with respect to the property is either allocated and apportioned to the gross tested income of the tested income CFC for the CFC inclusion year under § 1.951A–2(c)(3) or capitalized to inventory or other property held for sale, the gross income or loss from the sale of which is taken into account in determining the tested income of the tested income CFC for the CFC inclusion year.

(3) *Dual use ratio.* The term *dual use ratio* means, with respect to dual use property, a tested income CFC, and a CFC inclusion year, a ratio (expressed as a percentage) calculated as—

(i) The sum of—

(A) The depreciation deduction or cost recovery allowance with respect to the property that is allocated and apportioned to the gross tested income of the tested income CFC for the CFC inclusion year under § 1.951A–2(c)(3), and

(B) The depreciation or cost recovery allowance with respect to the property that is capitalized to inventory or other property held for sale, the gross income or loss from the sale of which is taken into account in determining the tested income of the tested income CFC for the CFC inclusion year, divided by

(ii) The sum of—

(A) The total amount of the tested income CFC's depreciation deduction or cost recovery allowance with respect to the property for the CFC inclusion year, and

(B) The total amount of the tested income CFC's depreciation or cost recovery allowance with respect to the property capitalized to inventory or other property held for sale, the gross income or loss from the sale of which is taken into account in determining the income or loss of the tested income CFC for the CFC inclusion year.

(4) *Example.* The following example illustrates the application of this paragraph (d).

(i) *Facts.* FS is a tested income CFC and a wholesale distributor of Product A. FS owns a warehouse and trucks that store and deliver Product A, respectively. The warehouse has an average adjusted basis for Year 1 of $20,000x. The depreciation with respect to the warehouse for Year 1 is $2,000x, which is capitalized to inventory of Product A. Of the $2,000x depreciation capitalized to inventory of Product A, $500x is capitalized to FS's ending inventory of Product A, $1,200x is capitalized to inventory of Product A, the gross income or loss from the sale of which is taken into account in determining FS's tested income for Year 1, and $300x is capitalized to inventory of Product A, the gross income or loss from the sale of which is taken into account in determining FS's foreign base company sales income for Year 1. The trucks have an average adjusted basis for Year 1 of $4,000x. FS does not capitalize depreciation with respect to the trucks to inventory or other property held for sale. FS's depreciation deduction with respect to the trucks is $20x for Year 1, $15x of which is allocated and apportioned to FS's gross tested income under § 1.951A–2(c)(3).

(ii) *Analysis*—(A) *Dual use property.* The warehouse and trucks are property for which the depreciation deduction provided by section 167(a) is eligible to be determined under section 168 (without regard to section 168(f)(1), (2), or (5), section 168(k)(2)(A)(i)(II), (IV), or (V), and the date placed in service). Therefore, under paragraph (c)(2) of this section, the warehouse and trucks are tangible property. Furthermore, because the warehouse and trucks are used in the production of gross tested income in Year 1 within the meaning of paragraph (c)(1) of this section, the warehouse and trucks are specified tangible property. Finally, because the warehouse and trucks are used in both the production of gross tested income and the production of gross income that is not gross tested income in Year 1 within the meaning of paragraph (d)(2) of this section, the warehouse and trucks are dual use property. Therefore, under paragraph (d)(1) of this section, the amount of FS's adjusted basis in the warehouse and trucks that is treated as adjusted basis in specified tangible property for Year 1 is determined by multiplying FS's adjusted basis in the warehouse and trucks by FS's dual use ratio with respect to the warehouse and trucks determined under paragraph (d)(3) of this section.

(B) *Depreciation not capitalized to inventory.* Because none of the depreciation with respect to the trucks is capitalized to inventory or other property held for sale, FS's dual use ratio with respect to the trucks is determined entirely by reference the depreciation deduction with respect to the trucks. Therefore, under paragraph (d)(3) of this section, FS's dual use ratio with respect to the trucks for Year 1 is 75%, which is FS's depreciation deduction with respect to the trucks that is allocated and apportioned to gross tested income under § 1.951A–2(c)(3) for Year 1 ($15x), divided by the total amount of FS's depreciation deduction with respect to the trucks for Year 1 ($20x). Accordingly, under paragraph (d)(1) of this section, $3,000x ($4,000x × 0.75) of FS's average adjusted bases in the trucks is taken into account under paragraph (b) of this section in determining FS's qualified business asset investment for Year 1.

(C) *Depreciation capitalized to inventory.* Because all of the depreciation with respect to the warehouse is capitalized to inventory, FS's dual use ratio with respect to the warehouse is determined entirely by reference to the depreciation with respect to the warehouse that is capitalized to inventory and included in cost of goods sold. Therefore, under paragraph (d)(3) of this section, FS's dual use ratio with respect to the warehouse for Year 1 is 80%, which is FS's depreciation with respect to the warehouse that is capitalized to inventory of Product A, the gross income or loss from the sale of which is taken into account in determining in FS's tested income for Year 1 ($1,200x), divided by FS's depreciation with respect to the warehouse that is capitalized to inventory of Product A, the gross income or loss from the sale of which is taken into account in determining FS's income for Year 1 ($1,500x). Accordingly, under paragraph (d)(1) of this section, $16,000x ($20,000x × 0.8) of FS's average adjusted basis in the warehouse is taken into account under paragraph (b) of this section in determining FS's qualified business asset investment for Year 1.

(e) *Determination of adjusted basis in specified tangible property*—(1) *In general.* Except as provided in paragraph (e)(3)(ii) of this section, the adjusted basis in specified tangible property for purposes of this section is determined by using the cost capitalization methods of accounting used by the controlled foreign corporation for purposes of determining the gross income and allowable deductions of the controlled foreign corporation under § 1.951A–2(c)(2) and the alternative depreciation system under section 168(g), and by allocating the depreciation deduction with respect to such property for a CFC inclusion year ratably to each day during the period in the CFC inclusion year to which such depreciation relates. For purposes of the preceding sentence, the period in the CFC inclusion year to which such depreciation relates is determined without regard to the applicable convention under section 168(d).

(2) *Effect of change in law.* The adjusted basis in specified tangible property is determined without regard to any provision of law enacted after December 22, 2017, unless such later enacted law specifically and directly amends the definition of qualified business asset investment under section 951A.

(3) *Specified tangible property placed in service before enactment of section 951A*—(i) *In general.* Except as provided in paragraph (e)(3)(ii) of this section, the adjusted basis in specified tangible property placed in service before December 22, 2017, is determined using the alternative depreciation system under section 168(g), as if this system had applied from the date that the property was placed in service.

(ii) *Election to use income and earnings and profits depreciation* *method for property placed in service before the first taxable year beginning after December 22, 2017*—(A) *In general.* If a controlled foreign corporation is not required to use, and does not in fact use, the alternative depreciation system under section 168(g) for purposes of determining income under § 1.952–2 and earnings and profits under § 1.964–1 with respect to property placed in service before the first taxable year beginning after December 22, 2017, and the controlling domestic shareholders (as defined in § 1.964–1(c)(5)) of the controlled foreign corporation make an election described in this paragraph (e)(3)(ii), the adjusted basis in specified tangible property of the controlled foreign corporation that was placed in service before the first taxable year of the controlled foreign corporation beginning after December 22, 2017, and the partner adjusted basis in partnership specified tangible property of any partnership of which the controlled foreign corporation is a partner that was placed in service before the first taxable year of the partnership beginning after December 22, 2017, is determined for purposes of this section based on the method of accounting for depreciation used by the controlled foreign corporation for purposes of determining income under § 1.952–2, subject to the modification described in this paragraph (e)(3)(ii)(A). If the controlled foreign corporation's method of accounting for depreciation takes into account salvage value of the property, the salvage value is reduced to zero by allocating the salvage value ratably to each day of the taxable year immediately after the last taxable year in which the method of accounting determined an amount of depreciation deduction for the property.

(B) *Manner of making the election.* The controlling domestic shareholders making the election described in this paragraph (e)(3) must file a statement that meets the requirements of § 1.964–1(c)(3)(ii) with their income tax returns for the taxable year that includes the last day of the controlled foreign corporation's applicable taxable year and follow the notice requirements of § 1.964–1(c)(3)(iii). The controlled foreign corporation's applicable taxable year is the first CFC inclusion year that begins after December 31, 2017, and ends within the controlling domestic shareholder's taxable year. For purposes of § 301.9100–3 of this chapter (addressing requests for extensions of time for filing certain regulatory elections), a controlling domestic shareholder is qualified to make the election described in this paragraph (e)(3) only if the shareholder determined the adjusted basis in specified tangible property placed in service before the first taxable year beginning after December 22, 2017, by applying the method described in paragraph (e)(3)(ii)(A) of this section with respect to the first taxable year of the controlled foreign corporation beginning after December 22, 2017, and each subsequent taxable year. The election statement must be filed in accordance with the rules provided in forms or instructions.

(f) *Special rules for short taxable years*—(1) *In general.* In the case of a tested income CFC that has a CFC inclusion year that is less than twelve months (a *short taxable year*), the rules for determining the qualified business asset investment of the tested income CFC under this section are modified as provided in paragraphs (f)(2) and (3) of this section with respect to the CFC inclusion year.

(2) *Determination of quarter closes.* For purposes of determining quarter closes, in determining the qualified business asset investment of a tested income CFC for a short taxable year, the quarters of the tested income CFC for purposes of this section are the full quarters beginning and ending within the short taxable year (if any), determining quarter length as if the tested income CFC did not have a short taxable year, plus one or more short quarters (if any).

(3) *Reduction of qualified business asset investment.* The qualified business asset investment of a tested income CFC for a short taxable year is the sum of—

(i) The sum of the tested income CFC's aggregate adjusted bases in specified tangible property as of the close of each full quarter (if any) in the CFC inclusion year divided by four, plus

(ii) The tested income CFC's aggregate adjusted bases in specified tangible property as of the close of each short quarter (if any) in the CFC inclusion year multiplied by the sum of the number of days in each short quarter divided by 365.

(4) *Example.* The following example illustrates the application of this paragraph (f).

(i) *Facts.* USP1, a domestic corporation, owns all of the stock of FS, a controlled foreign corporation. USP1 owns FS from the beginning of Year 1. On July 15, Year 1, USP1 sells FS to USP2, an unrelated person. USP2 makes a section 338(g) election with respect to the purchase of FS, as a result of which FS's taxable year is treated as ending on July 15. USP1, USP2, and FS all use the calendar year as their taxable year. FS's aggregate adjusted bases in specified tangible property is $250x as of March 31, $300x as of June 30, $275x as of July 15, $500x as of September 30, and $450x as of December 31.

(ii) *Analysis*—(A) *Determination of short taxable years and quarters.* FS has two short taxable years in Year 1. The first short taxable year is from January 1 to July 15, with two full quarters (January 1 through March 31 and April 1 through June 30) and one short quarter (July 1 through July 15). The second taxable year is from July 16 to December 31, with one short quarter (July 16 through September 30) and one full quarter (October 1 through December 31).

(B) *Calculation of qualified business asset investment for the first short taxable year.* Under paragraph (f)(2) of this section, for the first short taxable year in Year 1, FS has three quarter closes (March 31, June 30, and July 15). Under paragraph (f)(3) of this section, the qualified business asset investment of FS for the first short taxable year is $148.80x, the sum of $137.50x (($250x + $300x)/4) attributable to the two full quarters and $11.30x ($275x × 15/365) attributable to the short quarter.

(C) *Calculation of qualified business asset investment for the second short taxable year.* Under paragraph (f)(2) of this section, for the second short taxable year in Year 1, FS has two quarter closes (September 30 and December 31). Under paragraph (f)(3) of this section, the qualified business asset investment of FS for the second short taxable year is $217.98x, the sum of $112.50x ($450x/4) attributable to the one full quarter and $105.48x ($500x × 77/365) attributable to the short quarter.

(g) *Partnership property*—(1) *In general.* If a tested income CFC holds an interest in one or more partnerships during a CFC inclusion year (including indirectly through one or more partnerships that are partners in a lower-tier partnership), the qualified business asset investment of the tested income CFC for the CFC inclusion year (determined without regard to this paragraph (g)(1)) is increased by the sum of the tested income CFC's partnership QBAI with respect to each partnership for the CFC inclusion year. A tested loss CFC has no partnership QBAI for a CFC inclusion year.

(2) *Determination of partnership QBAI.* For purposes of paragraph (g)(1) of this section, the term *partnership QBAI* means, with respect to a partnership, a tested income CFC, and a CFC inclusion year, the sum of the tested income CFC's partner adjusted basis in each partnership specified tangible property of the partnership for each partnership taxable year that ends with or within the CFC inclusion year. If a partnership taxable year is less than twelve months, the principles of paragraph (f) of this section apply in determining a tested income CFC's partnership QBAI with respect to the partnership.

(3) *Determination of partner adjusted basis*—(i) *In general.* For purposes of

paragraph (g)(2) of this section, the term *partner adjusted basis* means the amount described in paragraph (g)(3)(ii) of this section with respect to sole use partnership property or paragraph (g)(3)(iii) of this section with respect to dual use partnership property. The principles of section 706(d) apply to this determination.

(ii) *Sole use partnership property*—(A) *In general.* The amount described in this paragraph (g)(3)(ii), with respect to sole use partnership property, a partnership taxable year, and a tested income CFC, is the sum of the tested income CFC's proportionate share of the partnership adjusted basis in the sole use partnership property for the partnership taxable year and the tested income CFC's partner-specific QBAI basis in the sole use partnership property for the partnership taxable year.

(B) *Definition of sole use partnership property.* The term *sole use partnership property* means, with respect to a partnership, a partnership taxable year, and a tested income CFC, partnership specified tangible property of the partnership that is used in the production of only gross tested income of the tested income CFC for the CFC inclusion year in which or with which the partnership taxable year ends. For purposes of the preceding sentence, partnership specified tangible property of a partnership is used in the production of only gross tested income for a CFC inclusion year if all the tested income CFC's distributive share of the partnership's depreciation deduction or cost recovery allowance with respect to the property (if any) for the partnership taxable year that ends with or within the CFC inclusion year is allocated and apportioned to the tested income CFC's gross tested income for the CFC inclusion year under § 1.951A–2(c)(3) and, if any of the partnership's depreciation or cost recovery allowance with respect to the property is capitalized to inventory or other property held for sale, all the tested income CFC's distributive share of the partnership's gross income or loss from the sale of such inventory or other property for the partnership taxable year that ends with or within the CFC inclusion year is taken into account in determining the tested income of the tested income CFC for the CFC inclusion year.

(iii) *Dual use partnership property*—(A) *In general.* The amount described in this paragraph (g)(3)(iii), with respect to dual use partnership property, a partnership taxable year, and a tested income CFC, is the sum of the tested income CFC's proportionate share of the partnership adjusted basis in the property for the partnership taxable year and the tested income CFC's partner-specific QBAI basis in the property for the partnership taxable year, multiplied by the tested income CFC's dual use ratio with respect to the property for the partnership taxable year determined under the principles of paragraph (d)(3) of this section, except that the ratio described in paragraph (d)(3) of this section is determined by reference to the tested income CFC's distributive share of the amounts described in paragraph (d)(3) of this section.

(B) *Definition of dual use partnership property.* The term *dual use partnership property* means partnership specified tangible property other than sole use partnership property.

(4) *Determination of proportionate share of the partnership's adjusted basis in partnership specified tangible property*—(i) *In general.* For purposes of paragraph (g)(3) of this section, the tested income CFC's proportionate share of the partnership adjusted basis in partnership specified tangible property for a partnership taxable year is the partnership adjusted basis in the property multiplied by the tested income CFC's proportionate share ratio with respect to the property for the partnership taxable year. Solely for purposes of determining the proportionate share ratio under paragraph (g)(4)(ii) of this section, the partnership's calculation of, and a partner's distributive share of, any income, loss, depreciation, or cost recovery allowance is determined under section 704(b).

(ii) *Proportionate share ratio.* The term *proportionate share ratio* means, with respect to a partnership, a partnership taxable year, and a tested income CFC, the ratio (expressed as a percentage) calculated as—

(A) The sum of—

(*1*) The tested income CFC's distributive share of the partnership's depreciation deduction or cost recovery allowance with respect to the property for the partnership taxable year, and

(*2*) The amount of the partnership's depreciation or cost recovery allowance with respect to the property that is capitalized to inventory or other property held for sale, the gross income or loss from the sale of which is taken into account in determining the tested income CFC's distributive share of the partnership's income or loss for the partnership taxable year, divided by

(B) The sum of—

(*1*) The total amount of the partnership's depreciation deduction or cost recovery allowance with respect to the property for the partnership taxable year, and

(*2*) The total amount of the partnership's depreciation or cost recovery allowance with respect to the property capitalized to inventory or other property held for sale, the gross income or loss from the sale of which is taken into account in determining the partnership's income or loss for the partnership taxable year.

(5) *Definition of partnership specified tangible property.* The term *partnership specified tangible property* means, with respect to a tested income CFC, tangible property (as defined in paragraph (c)(2) of this section) of a partnership that is—

(i) Used in the trade or business of the partnership,

(ii) Of a type with respect to which a deduction is allowable under section 167, and

(iii) Used in the production of gross income included in the tested income CFC's gross tested income.

(6) *Determination of partnership adjusted basis.* For purposes of this paragraph (g), the term *partnership adjusted basis* means, with respect to a partnership, partnership specified tangible property, and a partnership taxable year, the amount equal to the average of the partnership's adjusted basis in the partnership specified tangible property as of the close of each quarter in the partnership taxable year determined without regard to any adjustments under section 734(b) except for adjustments under section 734(b)(1)(B) or section 734(b)(2)(B) that are attributable to distributions of tangible property (as defined in paragraph (c)(2) of this section) and for adjustments under section 734(b)(1)(A) or 734(b)(2)(A). The principles of paragraphs (e) and (h) of this section apply for purposes of determining a partnership's adjusted basis in partnership specified tangible property and the proportionate share of the partnership's adjusted basis in partnership specified tangible property.

(7) *Determination of partner-specific QBAI basis.* For purposes of this paragraph (g), the term *partner-specific QBAI basis* means, with respect to a tested income CFC, a partnership, and partnership specified tangible property, the amount that is equal to the average of the basis adjustment under section 743(b) that is allocated to the partnership specified tangible property of the partnership with respect to the tested income CFC as of the close of each quarter in the partnership taxable year. For this purpose, a negative basis adjustment under section 743(b) is expressed as a negative number. The principles of paragraphs (e) and (h) of

this section apply for purposes of determining the partner-specific QBAI basis with respect to partnership specified tangible property.

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

(i) *Facts.* Except as otherwise stated, the following facts are assumed for purposes of the examples:

(A) FC, FC1, FC2, and FC3 are tested income CFCs.

(B) PRS is a partnership and its allocations satisfy the requirements of section 704.

(C) All properties are partnership specified tangible property.

(D) All persons use the calendar year as their taxable year.

(E) There is neither disqualified basis nor partner-specific QBAI basis with respect to any property.

(ii) *Example 1: Sole use partnership property*—(A) *Facts.* FC is a partner in PRS. PRS owns two properties, Asset A and Asset B. The average of PRS's adjusted basis as of the close of each quarter of PRS's taxable year in Asset A is $100x and in Asset B is $500x. In Year 1, PRS's section 704(b) depreciation deduction is $10x with respect to Asset A and $5x with respect to Asset B, and FC's section 704(b) distributive share of the depreciation deduction is $8x with respect to Asset A and $1x with respect to Asset B. None of the depreciation with respect to Asset A or Asset B is capitalized to inventory or other property held for sale. FC's entire distributive share of the depreciation deduction with respect to Asset A and Asset B is allocated and apportioned to FC's gross tested income for Year 1 under § 1.951A–2(c)(3).

(B) *Analysis*—(*1*) *Sole use partnership property.* Because all of FC's distributive share of the depreciation deduction with respect to Asset A and B is allocated and apportioned to gross tested income for Year 1, Asset A and Asset B are sole use partnership property within the meaning of paragraph (g)(3)(ii)(B) of this section. Therefore, under paragraph (g)(3)(ii)(A) of this section, FC's partner adjusted basis in Asset A and Asset B is equal to the sum of FC's proportionate share of PRS's partnership adjusted basis in Asset A and Asset B for Year 1 and FC's partner-specific QBAI basis in Asset A and Asset B for Year 1, respectively.

(*2*) *Proportionate share.* Under paragraph (g)(4)(i) of this section, FC's proportionate share of PRS's partnership adjusted basis in Asset A and Asset B is PRS's partnership adjusted basis in Asset A and Asset B for Year 1, multiplied by FC's proportionate share ratio with respect to Asset A and Asset B for Year 1, respectively. Because none of the depreciation with respect to Asset A or Asset B is capitalized to inventory or other property held for sale, FC's proportionate share ratio with respect to Asset A and Asset B is determined entirely by reference to the depreciation deduction with respect to Asset A and Asset B. Therefore, FC's proportionate share ratio with respect to Asset A for Year 1 is 80%, which is the ratio of FC's section 704(b) distributive share of PRS's section 704(b) depreciation deduction with respect to Asset A for Year 1 ($8x), divided by the total amount of PRS's section 704(b) depreciation deduction with respect to Asset A for Year 1 ($10x). FC's proportionate share ratio with respect to Asset B for Year 1 is 20%, which is the ratio of FC's section 704(b) distributive share of PRS's section 704(b) depreciation deduction with respect to Asset B for Year 1 ($1x), divided by the total amount of PRS's section 704(b) depreciation deduction with respect to Asset B for Year 1 ($5x). Accordingly, under paragraph (g)(4)(i) of this section, FC's proportionate share of PRS's partnership adjusted basis in Asset A is $80x ($100x × 0.8), and FC's proportionate share of PRS's partnership adjusted basis in Asset B is $100x ($500x × 0.2).

(*3*) *Partner adjusted basis.* Because FC has no partner-specific QBAI basis with respect to Asset A and Asset B, FC's partner adjusted basis in Asset A and Asset B is determined entirely by reference to its proportionate share of PRS's partnership adjusted basis in Asset A and Asset B. Therefore, under paragraph (g)(3)(ii)(A) of this section, FC's partner adjusted basis in Asset A is $80x, FC's proportionate share of PRS's partnership adjusted basis in Asset A, and FC's partner adjusted basis in Asset B is $100x, FC's proportionate share of PRS's partnership adjusted basis in Asset A.

(*4*) *Partnership QBAI.* Under paragraph (g)(2) of this section, FC's partnership QBAI with respect to PRS is $180x, the sum of FC's partner adjusted basis in Asset A ($80x) and FC's partner adjusted basis in Asset B ($100x). Accordingly, under paragraph (g)(1) of this section, FC increases its qualified business asset investment for Year 1 by $180x.

(iii) *Example 2: Dual use partnership property*—(A) *Facts.* FC owns a 50% interest in PRS. All section 704(b) and tax items are identical and are allocated equally between FC and its other partner. PRS owns three properties, Asset C, Asset D, and Asset E. PRS sells two products, Product A and Product B. All of FC's distributive share of the gross income or loss from the sale of Product A is taken into account in determining FC's tested income, and none of FC's distributive share of the gross income or loss from the sale of Product B is taken into account in determining FC's tested income.

(*1*) *Asset C.* The average of PRS's adjusted basis as of the close of each quarter of PRS's taxable year in Asset C is $100x. In Year 1, PRS's depreciation is $10x with respect to Asset C, none of which is capitalized to inventory or other property held for sale. FC's distributive share of the depreciation deduction with respect to Asset C is $5x ($10x × 0.5), $3x of which is allocated and apportioned to FC's gross tested income under § 1.951A–2(c)(3).

(*2*) *Asset D.* The average of PRS's adjusted basis as of the close of each quarter of PRS's taxable year in Asset D is $500x. In Year 1, PRS's depreciation is $50x with respect to Asset D, $10x of which is capitalized to inventory of Product A and $40x is capitalized to inventory of Product B. None of the $10x depreciation with respect to Asset D capitalized to inventory of Product A is capitalized to ending inventory. However, of the $40x capitalized to inventory of Product B, $10x is capitalized to ending inventory. Therefore, the amount of depreciation with respect to Asset D capitalized to inventory of Product A that is taken into account in determining FC's distributive share of the income or loss of PRS for Year 1 is $5x ($10x × 0.5), and the amount of depreciation with respect to Asset D capitalized to inventory of Product B that is taken into account in determining FC's distributive share of the income or loss of PRS for Year 1 is $15x ($30x × 0.5).

(*3*) *Asset E.* The average of PRS's adjusted basis as of the close of each quarter of PRS's taxable year in Asset E is $600x. In Year 1, PRS's depreciation is $60x with respect to Asset E. Of the $60x depreciation with respect to Asset E, $20x is allowed as a deduction, $24x is capitalized to inventory of Product A, and $16x is capitalized to inventory of Product B. FC's distributive share of the depreciation deduction with respect to Asset E is $10x ($20x × 0.5), $8x of which is allocated and apportioned to FC's gross tested income under § 1.951A–2(c)(3). None of the $24x depreciation with respect to Asset E capitalized to inventory of Product A is capitalized to ending inventory. However, of the $16x depreciation with respect to Asset E capitalized to inventory of Product B, $10x is capitalized to ending inventory. Therefore, the amount of depreciation with respect to Asset E capitalized to inventory of Product A that is taken into account in determining FC's distributive share of the income or loss of PRS for Year 1 is $12x ($24x × 0.5), and the amount of depreciation with respect to Asset E capitalized to inventory of Product B that is taken into account in determining FC's distributive share of the income or loss of PRS for Year 1 is $3x ($6x × 0.5).

(B) *Analysis.* Because Asset C, Asset D, and Asset E are not used in the production of only gross tested income in Year 1 within the meaning of paragraph (g)(3)(ii)(B) of this section, Asset C, Asset D, and Asset E are partnership dual use property within the meaning of paragraph (g)(3)(iii)(B) of this section. Therefore, under paragraph (g)(3)(iii)(A) of this section, FC's partner adjusted basis in Asset C, Asset D, and Asset E is the sum of FC's proportionate share of PRS's partnership adjusted basis in Asset C, Asset D, and Asset E, respectively, for Year 1, and FC's partner-specific QBAI basis in Asset C, Asset D, and Asset E, respectively, for Year 1, multiplied by FC's dual use ratio with respect to Asset C, Asset D, and Asset E, respectively, for Year 1, determined under the principles of paragraph (d)(3) of this section, except that the ratio described in paragraph (d)(3) of this section is determined by reference to FC's distributive share of the amounts described in paragraph (d)(3) of this section.

(*1*) *Asset C*—(*i*) *Proportionate share.* Under paragraph (g)(4)(i) of this section, FC's proportionate share of PRS's partnership adjusted basis in Asset C is PRS's partnership adjusted basis in Asset C for Year 1, multiplied by FC's proportionate share ratio with respect to Asset C for Year 1. Because none of the depreciation with respect to Asset C is capitalized to inventory or other property held for sale, FC's proportionate share ratio with respect to Asset C is determined entirely by reference to the depreciation deduction with respect to Asset C. Therefore, FC's proportionate share ratio with respect to Asset C is 50%, which is the ratio calculated as the amount of FC's section 704(b) distributive share of PRS's section 704(b) depreciation deduction with respect to Asset C for Year 1 ($5x), divided by the total amount of PRS's section 704(b) depreciation deduction with respect to Asset C for Year 1 ($10x). Accordingly, under paragraph (g)(4)(i) of this section, FC's proportionate share of PRS's partnership adjusted basis in Asset C is $50x ($100x × 0.5).

(*ii*) *Dual use ratio.* Because none of the depreciation with respect to Asset C is capitalized to inventory or other property held for sale, FC's dual use ratio with respect to Asset C is determined entirely by reference to the depreciation deduction with respect to Asset C. Therefore, FC's dual use ratio with respect to Asset C is 60%, which is the ratio calculated as the amount of FC's distributive share of PRS's depreciation deduction with respect to Asset C that is allocated and apportioned to FC's gross tested income under § 1.951A–2(c)(3) for Year 1 ($3x), divided by the total amount of FC's distributive share of PRS's depreciation deduction with respect to Asset C for Year 1 ($5x).

(*iii*) *Partner adjusted basis.* Because FC has no partner-specific QBAI basis with respect to Asset C, FC's partner adjusted basis in Asset C is determined entirely by reference to FC's proportionate share of PRS's partnership adjusted basis in Asset C, multiplied by FC's dual use ratio with respect to Asset C. Under paragraph (g)(3)(iii)(A) of this section, FC's partner adjusted basis in Asset C is $30x, FC's proportionate share of PRS's partnership adjusted basis in Asset C for Year 1 ($50x), multiplied by FC's dual use ratio with respect to Asset C for Year 1 (60%).

(*3*) *Asset D*—(*i*) *Proportionate share.* Under paragraph (g)(4)(i) of this section, FC's proportionate share of PRS's partnership adjusted basis in Asset D is PRS's partnership adjusted basis in Asset D for Year 1, multiplied by FC's proportionate share ratio with respect to Asset D for Year 1. Because all of the depreciation with respect to Asset D is capitalized to inventory, FC's proportionate share ratio with respect to Asset D is determined entirely by reference to the depreciation with respect to Asset D that is capitalized to inventory and included in cost of goods sold. Therefore, FC's proportionate share ratio with respect to Asset D is 50%, which is the ratio calculated as the amount of PRS's section 704(b) depreciation with respect to Asset D capitalized to Product A and Product B that is taken into account in determining FC's section 704(b) distributive share of PRS's income or loss for Year 1 ($20x), divided by the total amount of PRS's section 704(b) depreciation with respect to Asset D capitalized to Product A and Product B that is taken into account in determining PRS's section 704(b) income or loss for Year 1 ($40x). Accordingly, under paragraph (g)(4)(i) of this section, FC's proportionate share of PRS's partnership adjusted basis in Asset D is $250x ($500x × 0.5).

(*ii*) *Dual use ratio.* Because all of the depreciation with respect to Asset D is capitalized to inventory, FC's dual use ratio with respect to Asset D is determined entirely by reference to the depreciation with respect to Asset D that is capitalized to inventory and included in cost of goods sold. Therefore, FC's dual use ratio with respect to Asset D is 25%, which is the ratio calculated as the amount of depreciation with respect to Asset D capitalized to inventory of Product A and Product B that is taken into account in determining FC's tested income for Year 1 ($5x), divided by the total amount of depreciation with respect to Asset D capitalized to inventory of Product A and Product B that is taken into account in determining FC's income or loss for Year 1 ($20x).

(*iii*) *Partner adjusted basis.* Because FC has no partner-specific QBAI basis with respect to Asset D, FC's partner adjusted basis in Asset D is determined entirely by reference to FC's proportionate share of PRS's partnership adjusted basis in Asset D, multiplied by FC's dual use ratio with respect to Asset D. Under paragraph (g)(3)(iii)(A) of this section, FC's partner adjusted basis in Asset D is $62.50x, FC's proportionate share of PRS's partnership adjusted basis in Asset D for Year 1 ($250x), multiplied by FC's dual use ratio with respect to Asset D for Year 1 (25%).

(*4*) *Asset E*—(*i*) *Proportionate share.* Under paragraph (g)(4)(i) of this section, FC's proportionate share of PRS's partnership adjusted basis in Asset E is PRS's partnership adjusted basis in Asset E for Year 1, multiplied by FC's proportionate share ratio with respect to Asset E for Year 1. Because the depreciation with respect to Asset E is partly deducted and partly capitalized to inventory, FC's proportionate share ratio with respect to Asset E is determined by reference to both the depreciation that is deducted and the depreciation that is capitalized to inventory and included in cost of goods sold. Therefore, FC's proportionate share ratio with respect to Asset E is 50%, which is the ratio calculated as the sum ($25x) of the amount of FC's section 704(b) distributive share of PRS's section 704(b) depreciation deduction with respect to Asset E for Year 1 ($10x) and the amount of PRS's section 704(b) depreciation with respect to Asset E capitalized to inventory of Product A and Product B that is taken into account in determining FC's section 704(b) distributive share of PRS's income or loss for Year 1 ($15x), divided by the sum ($50x) of the total amount of PRS's section 704(b) depreciation deduction with respect to Asset E for Year 1 ($20x) and the total amount of PRS's section 704(b) depreciation with respect to Asset E capitalized to inventory of Product A and Product B that is taken into account in determining PRS's section 704(b) income or loss for Year 1 ($30x). Accordingly, under paragraph (g)(4)(i) of this section, FC's proportionate share of PRS's partnership adjusted basis in Asset E is $300x ($600x × 0.5).

(*ii*) *Dual use ratio.* Because the depreciation with respect to Asset E is partly deducted and partly capitalized to inventory, FC's dual use ratio with respect to Asset E is determined by reference to the depreciation that is deducted and the depreciation that is capitalized to inventory and included in cost of goods sold. Therefore, FC's dual use ratio with respect to Asset E is 80%, which is the ratio calculated as the sum ($20x) of the amount of FC's distributive share of PRS's depreciation deduction with respect to Asset E that is allocated and apportioned to FC's gross tested income under § 1.951A–2(c)(3) for Year 1 ($8x) and the amount of depreciation with respect to Asset E capitalized to inventory of Product A and Product B that is taken into account in determining FC's tested income for Year 1 ($12x), divided by the sum ($25x) of the total amount of FC's distributive share of PRS's depreciation deduction with respect to Asset E for Year 1 ($10x) and the total amount of depreciation with respect to Asset E capitalized to inventory of Product A and Product B that is taken into account in determining FC's income or loss for Year 1 ($15x).

(*iii*) *Partner adjusted basis.* Because FC has no partner-specific QBAI basis with respect to Asset E, FC's partner adjusted basis in Asset E is determined entirely by reference to FC's proportionate share of PRS's partnership adjusted basis in Asset E, multiplied by FC's dual use ratio with respect to Asset E. Under paragraph (g)(3)(iii)(A) of this section, FC's partner adjusted basis in Asset E is $240x, FC's proportionate share of PRS's partnership adjusted basis in Asset E for Year 1 ($300x), multiplied by FC's dual use ratio with respect to Asset E for Year 1 (80%).

(*5*) *Partnership QBAI.* Under paragraph (g)(2) of this section, FC's partnership QBAI with respect to PRS is $332.50x, the sum of FC's partner adjusted basis in Asset C ($30x), FC's partner adjusted basis in Asset D ($62.50x), and FC's partner adjusted basis in Asset E ($240x). Accordingly, under paragraph (g)(1) of this section, FC increases its qualified business asset investment for Year 1 by $332.50x.

(iv) *Example 3: Sole use partnership specified tangible property; section 743(b) adjustments*—(A) *Facts.* The facts are the same as in paragraph (g)(8)(ii)(A) of this section (the facts in *Example 1*), except that there is an average of $40x positive adjustment to the adjusted basis in Asset A as of the close of each quarter of PRS's taxable year with respect to FC under section 743(b) and an average of $20x negative adjustment to the adjusted basis in Asset B as of the close of each quarter of PRS's taxable year with respect to FC under section 743(b).

(B) *Analysis.* Under paragraph (g)(3)(ii)(A) of this section, FC's partner adjusted basis in Asset A is $120x, which is the sum of $80x (FC's proportionate share of PRS's partnership adjusted basis in Asset A as illustrated in paragraph (g)(8)(ii)(B)(*2*) of this section (paragraph (B)(*2*) of the analysis in *Example 1*)) and $40x (FC's partner-specific QBAI basis in Asset A). Under paragraph (g)(3)(ii)(A) of this section, FC's partner adjusted basis in Asset B is $80x, the sum of $100x (FC's proportionate share of the partnership adjusted basis in the property as illustrated in paragraph (g)(8)(ii)(B)(*2*) of this section (paragraph (B)(*2*) of the analysis in *Example 1*)) and (−$20x) (FC's partner-specific QBAI basis in Asset B). Therefore, under paragraph (g)(2) of this section, FC's partnership QBAI with respect to PRS is $200x ($120x + $80x). Accordingly, under paragraph (g)(1) of this section, FC increases its qualified business asset investment for Year 1 by $200x.

(v) *Example 4: Tested income CFC with distributive share of loss from a partnership*—(A) *Facts.* FC owns a 50% interest in PRS. All section 704(b) and tax items are identical and are allocated equally between FC and its other partner. PRS owns Asset F. None of the depreciation with respect to Asset F is capitalized to inventory or other property held for sale. The average of PRS's adjusted basis as of the close of each quarter of PRS's taxable year in Asset F is $220x. PRS has $20x of gross income, a $22x depreciation deduction with respect to Asset F, and no other income or expense in Year 1. FC's distributive share of the gross income is $10x, all of which is includible in FC's gross tested income in Year 1, and FC's distributive share of PRS's depreciation deduction with respect to Asset F is $11x in Year 1, all of which is allocated and apportioned to FC's gross tested income under § 1.951A–2(c)(3). FC's distributive share of loss from PRS is $1x. FC also has $8x of gross tested income from other sources in Year 1 and no other deductions. Therefore, FC has tested income of $7x for Year 1.

(B) *Analysis.* FC's partner adjusted basis in Asset F is $110x, which is the sum of FC's proportionate share of the partnership adjusted basis in the property ($220x × 0.5) and FC's partnership-specific QBAI basis in Asset F ($0). Therefore, FC's partnership QBAI with respect to PRS is $110x. Accordingly, under paragraph (g)(1) of this section, FC increases its qualified business asset investment by $110x, notwithstanding that FC would not be a tested income CFC but for its $8x of gross tested income from other sources.

(vi) *Example 5: Tested income CFC sale of partnership interest before CFC inclusion date*—(A) *Facts.* FC1 owns a 50% interest in PRS on January 1 of Year 1. On July 1 of Year 1, FC1 sells its entire interest in PRS to FC2. PRS owns Asset G. The average of PRS's adjusted basis as of the close of each quarter of PRS's taxable year in Asset G is $100x. FC1's section 704(b) distributive share of the depreciation deduction with respect to Asset G is 25% with respect to PRS's entire year. FC2's section 704(b) distributive share of the depreciation deduction with respect to Asset G is also 25% with respect to PRS's entire year. Both FC1's and FC2's entire distributive shares of the depreciation deduction with respect to Asset G are allocated and apportioned under § 1.951A–2(c)(3) to FC1's and FC2's gross tested income, respectively, for Year 1. PRS's allocations satisfy section 706(d).

(B) *Analysis*—(*1*) *FC1.* Because FC1 owns an interest in PRS during FC1's CFC inclusion year and receives a distributive share of partnership items of the partnership under section 706(d), FC1 has partnership QBAI with respect to PRS in the amount determined under paragraph (g)(2) of this section. Under paragraph (g)(3)(i) of this section, FC1's partner adjusted basis in Asset G is $25x, the product of $100x (the partnership's adjusted basis in the property) and 25% (FC1's section 704(b) distributive share of depreciation deduction with respect to Asset G). Therefore, FC1's partnership QBAI with respect to PRS is $25x. Accordingly, under paragraph (g)(1) of this section, FC1 increases its qualified business asset investment by $25x for Year 1.

(*2*) *FC2.* FC2's partner adjusted basis in Asset G is also $25x, the product of $100x (the partnership's adjusted basis in the property) and 25% (FC2's section 704(b) distributive share of depreciation deduction with respect to Asset G). Therefore, FC2's partnership QBAI with respect to PRS is $25x. Accordingly, under paragraph (g)(1) of this section, FC2 increases its qualified business asset investment by $25x for Year 1.

(vii) *Example 6: Partnership adjusted basis; distribution of property in liquidation of partnership interest*—(*A*) *Facts.* FC1, FC2, and FC3 are equal partners in PRS, a partnership. FC1 and FC2 each has an adjusted basis of $100x in its partnership interest. FC3 has an adjusted basis of $50x in its partnership interest. PRS has a section 754 election in effect. PRS owns Asset H with a fair market value of $50x and an adjusted basis of $0, Asset I with a fair market value of $100x and an adjusted basis of $100x, and Asset J with a fair market value of $150x and an adjusted basis of $150x. Asset H and Asset J are tangible property, but Asset I is not tangible property. PRS distributes Asset I to FC3 in liquidation of FC3's interest in PRS. None of FC1, FC2, FC3, or PRS recognizes gain on the distribution. Under section 732(b), FC3's adjusted basis in Asset I is $50x. PRS's adjusted basis in Asset H is increased by $50x to $50x under section 734(b)(1)(B), which is the amount by which PRS's adjusted basis in Asset I immediately before the distribution exceeds FC3's adjusted basis in Asset I.

(*B*) *Analysis.* Under paragraph (g)(6) of this section, PRS's adjusted basis in Asset H is determined without regard to any adjustments under section 734(b) except for adjustments under section 734(b)(1)(B) or section 734(b)(2)(B) that are attributable to distributions of tangible property and for adjustments under section 734(b)(1)(A) or 734(b)(2)(A). The adjustment to the adjusted basis in Asset H is under section 734(b)(1)(B) and is attributable to the distribution of Asset I, which is not tangible property. Accordingly, for purposes of applying paragraph (g)(1) of this section, PRS's adjusted basis in Asset H is $0.

(h) *Anti-avoidance rules related to certain transfers of property*—(1) *Disregard of adjusted basis in specified tangible property held temporarily*—(i) *In general.* For purposes of determining a controlled foreign corporation's aggregate adjusted bases in specified tangible property as of the close of a quarter (*tested quarter close*), the adjusted basis in specified tangible property is disregarded as of the tested quarter close if the controlled foreign corporation (*acquiring CFC*) acquires the property temporarily before the tested quarter close with a principal purpose of increasing the deemed tangible income return of a U.S. shareholder (*applicable U.S. shareholder*) for a U.S. shareholder year, and the holding of the property by the acquiring CFC as of the tested quarter close would, without regard to this paragraph (h)(1)(i), increase the deemed tangible income return of the applicable U.S. shareholder for the U.S. shareholder inclusion year.

(ii) *Disregard of first quarter close.* The adjusted basis in specified tangible property may be disregarded under paragraph (h)(1)(i) of this section for purposes of multiple tested quarter closes that follow an acquisition and on which the acquiring CFC holds the property. However, if the holding of specified tangible property would, without regard to paragraph (h)(1)(i) of this section, increase the deemed tangible income return of an applicable U.S. shareholder because the adjusted basis in such property is taken into account for only one additional quarter close of a tested income CFC of the applicable U.S. shareholder in determining the deemed tangible income return of the applicable U.S. shareholder of the U.S. shareholder inclusion year, the adjusted basis in the property is disregarded for purposes of determining the acquiring CFC's aggregate adjusted bases in specified tangible property only as of the first tested quarter close that follows the acquisition.

(iii) *Safe harbor for certain transfers involving CFCs.* The holding of specified tangible property as of a tested quarter close does not increase the deemed tangible income return of an applicable U.S. shareholder within the meaning of paragraph (h)(1)(i) of this section if each of the following conditions is satisfied with respect to the acquisition and subsequent transfer of property by the acquiring CFC—

(A) A controlled foreign corporation (*predecessor CFC*) holds the property on a quarter close of the predecessor CFC (*preceding quarter close*) that occurs on the same date as the last quarter close of the acquiring CFC preceding the acquisition.

(B) A controlled foreign corporation (*successor CFC*) holds the property on a quarter close of the successor CFC (*succeeding quarter close*) that occurs on the same date as the first quarter close of the acquiring CFC following the subsequent transfer.

(C) The proportion of the stock that the applicable U.S. shareholder owns (within the meaning of section 958(a)) of the acquiring CFC on the tested quarter close does not exceed the proportion of the stock that the applicable U.S. shareholder owns of either the predecessor CFC on the preceding quarter close or the successor CFC on the succeeding quarter close; and

(D) Each of the predecessor CFC and the successor CFC is a tested income CFC for its CFC inclusion year that includes the date of the tested quarter close.

(iv) *Determination of principal purpose and transitory holding*—(A) *Presumption for ownership less than 12 months.* For purposes of paragraph (h)(1)(i) of this section, specified tangible property is presumed to be acquired temporarily with a principal purpose of increasing the deemed tangible income return of an applicable U.S. shareholder for a U.S. shareholder inclusion year if the property is held by the acquiring CFC for less than 12 months and the holding of the property by the acquiring CFC as of the tested quarter close would have the effect of increasing the deemed tangible income return of the applicable U.S. shareholder for a U.S. shareholder inclusion year. The presumption described in the preceding sentence may be rebutted only if the facts and circumstances clearly establish that the subsequent transfer of the property by the acquiring CFC was not contemplated when the property was acquired by the acquiring CFC and that a principal purpose of the acquisition of the property was not to increase the deemed tangible income return of the applicable U.S. shareholder for a U.S. shareholder inclusion year. In order to rebut the presumption, a statement must be attached to the Form 5471 filed by the taxpayer for the taxable year of the CFC in which the subsequent transfer occurs and include any information required by applicable administrative announcements, forms or instructions. The statement must explain the facts and circumstances supporting the rebuttal and be in accordance with any rules provided in forms and instructions.

(B) *Presumption for ownership greater than 36 months.* For purposes of paragraph (h)(1)(i) of this section, specified tangible property is presumed not to be acquired temporarily with a principal purpose of increasing the deemed tangible income return of an applicable U.S. shareholder for a U.S. shareholder inclusion year if the property is held by the acquiring CFC for more than 36 months. The presumption described in the preceding sentence may be rebutted only if the facts and circumstances clearly establish that the subsequent transfer of the property by the acquiring CFC was contemplated when the property was acquired by the acquiring CFC and that a principal purpose of the acquisition of the property was to increase the deemed tangible income return of the applicable U.S. shareholder for a U.S. shareholder inclusion year.

(v) *Determination of holding period.* For purposes of this paragraph (h)(1), the period during which an acquiring CFC holds specified tangible property is determined without regard to section 1223.

(vi) *Treatment as single applicable U.S. shareholder.* For purposes of this paragraph (h)(1), all U.S. persons that are related persons are treated as a single applicable U.S. shareholder. For purposes of the preceding sentence, U.S. persons are related if they bear a relationship described in section 267(b) or 707(b) immediately before or immediately after a transaction.

(vii) *Examples.* The following examples illustrate the application of this paragraph (h)(1).

(A) *Facts.* Except as otherwise stated, the following facts are assumed for purposes of the examples:

(*1*) USP is a domestic corporation.

(*2*) CFC1, CFC2 and CFC3 are tested income CFCs.

(*3*) R is unrelated to USP.

(*4*) All persons use the calendar year as their taxable year.

(*5*) Asset A is specified tangible property.

(*6*) Both Year 1 and Year 2 begin on or after January 1, 2018, and have 365 days.

(*7*) USP has no specified interest expense (as defined in § 1.951A–1(c)(3)(iii)).

(B) *Example 1: Qualification for safe harbor*—(*1*) *Facts.* USP owns all of the stock of CFC1, which owns all of the stock of CFC2, which owns all the stock of CFC3. As of January 1, Year 1, CFC1 owns Asset A, which is specified tangible property. On December 30, Year 1, CFC1 transfers Asset A to CFC2. On April 10, Year 2, CFC2 transfers Asset A to CFC3. CFC3 holds Asset A for the rest of Year 2.

(*2*) *Analysis.* Under the safe harbor of paragraph (h)(1)(iii) of this section, CFC2's holding of Asset A as of each of the December 31, Year 1 tested quarter close and the March 31, Year 2 tested quarter close does not increase the deemed tangible income return of USP, the applicable United States shareholder, for Year 1 or Year 2 because each of the requirements in paragraphs (h)(1)(iii)(A) through (D) of this section is satisfied. The requirement in paragraph (h)(1)(iii)(A) of this section is satisfied because CFC1, a predecessor CFC, held Asset A on September 30, Year 1, a quarter close of CFC1 that occurs on the same date as the last quarter close of CFC2, the acquiring CFC, preceding the December 30, Year 1 acquisition of Asset A. The requirement in paragraph (h)(1)(iii)(B) of this section is satisfied because CFC3, a successor CFC, holds Asset A on June 30, Year 2, a quarter close of CFC3 that occurs on the same date as the first quarter close of CFC2 following April 10, Year 2, the date of the subsequent transfer of Asset A. The requirement in paragraph (h)(1)(iii)(C) of this section is satisfied because the proportion of stock that USP, the applicable U.S. shareholder, owns (within the meaning of section 958(a)) of CFC2, the acquiring CFC, on each of the December 31, Year 1 tested quarter close and the March 31, Year 2 tested quarter close (100%), does not exceed the proportion of the stock that USP owns of either CFC1 (100%) on the preceding quarter close (September 30, Year 1) or of CFC3 (100%) on the succeeding quarter close (June 30, Year 2). Finally, the requirement in paragraph (h)(1)(iii)(D) of this section is satisfied because each of CFC1 and CFC3 is a tested income CFC for Year 1 and Year 2, the CFC inclusion years that include the December 31, Year 1 tested quarter close and the March 31, Year 2 tested quarter close. Accordingly, paragraph (h)(1)(i) of this section does not apply to disregard the adjusted basis in Asset A in determining CFC2's aggregate adjusted basis in specified tangible property as of December 31, Year 1, or March 30, Year 2.

(C) *Example 2: Transfers between CFCs with different taxable year ends*—(*1*) *Facts.* The facts are the same as in paragraph (h)(1)(vii)(B)(*1*) of this section (the facts in *Example 1*), except that CFC1 has a taxable year ending November 30, and the facts and circumstances do not clearly establish that the April 10, Year 2 transfer of Asset A by CFC2 was not contemplated when Asset A was acquired by CFC2 and that a principal purpose of the acquisition of the property was not to increase the deemed tangible income return of USP, the applicable U.S. shareholder.

(*2*) *Analysis.* CFC2's holding of Asset A as of each of the December 31, Year 1 tested quarter close and the March 31, Year 2 tested quarter close does not satisfy the safe harbor under paragraph (h)(1)(iii) of this section because CFC1, the predecessor CFC, does not hold Asset A on a quarter close of CFC1 that occurs on the same date as the September 30, Year 1, quarter close of CFC2, the acquiring CFC, which is the last quarter close of CFC2 preceding the December 30, Year 1 acquisition of Asset A. In addition, because CFC2 held Asset A for less than 12 months (from December 31, Year 1, until April 10, Year 2), the presumption in paragraph (h)(1)(iv)(A) of this section applies such that CFC2 is presumed to have acquired Asset A temporarily with a principal purpose of increasing the deemed tangible income return of USP for the shareholder inclusion year, and the facts and circumstances do not clearly establish that CFC2 did not acquire Asset A with such a principal purpose. Because CFC2 holds Asset A as of December

31, Year 1, the tested quarter close, the adjusted basis in Asset A would be, without regard to paragraph (h)(1)(i) of this section, taken into account for purposes of determining USP's deemed tangible income return for its Year 1 taxable year as of five quarter closes (CFC1's quarter closes on February 28, May 31, August 31, and November 30, and CFC2's quarter close on December 31). If instead CFC1 had retained Asset A during the period CFC2 temporarily held the asset and had transferred Asset A directly to CFC3 on January 10, Year 2, the adjusted basis in Asset A would have been taken into account for purposes of determining USP's deemed tangible income return for its Year 1 taxable year as of only four quarter closes (CFC1's quarter closes on February 28, May 30, August 30, and November 30). Under paragraph (h)(1)(ii) of this section, because the adjusted basis in Asset A would (without regard to paragraph (h)(1)(i) of this section) be taken into account for only one additional quarter close of a tested income CFC of USP in determining USP's deemed tangible income return for Year 1 and Year 2, the adjusted basis in Asset A is disregarded for purposes of determining CFC's aggregate adjusted bases in specified tangible property only as of December 31, Year 1, the first tested quarter close that follows the acquisition. Accordingly, under paragraph (h)(1)(i) of this section, the adjusted basis in Asset A is disregarded in determining CFC2's aggregate adjusted basis in specified tangible property as of December 31, Year 1.

(D) *Example 3: Acquisition from unrelated person*—(*1*) *Facts.* USP owns all of the stock of CFC1 and CFC2. CFC1 has a taxable year ending November 30. On October 30, Year 1, CFC1 acquires Asset B from R. On December 30, Year 1, CFC1 transfers Asset B to CFC2. The facts and circumstances do not clearly establish that the December 31, Year 1, transfer of Asset B by CFC1 was not contemplated when Asset B was acquired by CFC1 and that a principal purpose of the acquisition of the property was not to increase the deemed tangible income return of USP, the applicable U.S. shareholder.

(*2*) *Analysis.* CFC1's holding of Asset B as of the November 30, Year 1 tested quarter close does not satisfy the safe harbor under paragraph (h)(1)(iii) of this section because the requirements in paragraphs (h)(1)(iii)(A) through (D) of this section are not satisfied. Because CFC1 held Asset B for less than 12 months (from October 30, Year 1, until December 30, Year 1), the presumption in paragraph (h)(1)(iv)(A) of this section applies such that CFC1 is presumed to have held Asset B temporarily with a principal purpose of increasing the deemed tangible income return of USP for the taxable year, and the facts and circumstances do not clearly establish that CFC1 did not acquire Asset B with a principal purpose of increasing the deemed tangible income return of USP. Because CFC1 holds Asset B as of November 30, Year 1, the adjusted basis in Asset B would be, without regard to paragraph (h)(1)(i) of this section, taken into account for purposes of determining USP's deemed tangible income return for its Year 1 taxable year as of two quarter closes (CFC1's quarter close on November 30, Year 1, and CFC2's quarter close on December 31, Year 1). If instead CFC2 had acquired Asset B directly from R, the adjusted basis in Asset B would have been taken into account for purposes of determining USP's deemed tangible income return for its Year 1 taxable year as of only one quarter close (CFC2's quarter close on December 31, Year 1). Accordingly, under paragraph (h)(1)(i) of this section, the adjusted basis in Asset B is disregarded in determining CFC1's aggregate adjusted basis in specified tangible property as of November 30, Year 1.

(E) *Example 4: Acquisitions from tested loss CFCs*—(*1*) *Facts.* USP owns all of the stock of CFC1 and CFC2. As of January 1, Year 1, CFC1 owns Asset C. On March 30, Year 1, CFC1 transfers Asset C to CFC2. For Year 1, CFC1 is a tested loss CFC and CFC2 is a tested income CFC. On March 30, Year 2, CFC2 transfers Asset C back to CFC1. For Year 2, both CFC1 and CFC2 are tested income CFCs. A principal purpose of CFC2 holding Asset C as of March 31, Year 1, June 30, Year 1, September 30, Year 1, and December 31, Year 1, was to increase USP's deemed tangible income return.

(*2*) *Analysis.* CFC2's holding of Asset C as of March 31, Year 1, June 30, Year 1, September 30, Year 1, and December 31, Year 1 does not satisfy the safe harbor under paragraph (h)(1)(iii) of this section because CFC1 is not a tested income CFC for Year 1 and thus the requirement in paragraph (h)(1)(iii)(D) of this section is not satisfied. Because CFC2 acquired Asset C before, and temporarily held as of, March 31, Year 1, June 30, Year 1, September 30, Year 1, December 31, Year 1 and the holding of the property by CFC2 as of each such tested quarter close would increase the deemed tangible income return of USP, under paragraph (h)(1)(i) of this section, the adjusted basis in Asset C is disregarded in determining CFC2's aggregate adjusted basis in specified tangible property as of each of March 31, Year 1, June 30, Year 1, September 30, Year 1, and December 31, Year 1.

(2) *Disregard of adjusted basis in property transferred during the disqualified period*—(i) *Operative rules*—(A) *In general.* For purposes of determining the qualified business asset investment of a tested income CFC for any CFC inclusion year, disqualified basis in property is disregarded.

(B) *Application to dual use property.* In the case of dual use property (as defined in paragraph (d)(2) of this section), paragraph (h)(2)(i)(A) of this section applies by reducing the amount of the adjusted basis in the property treated as adjusted basis in specified tangible property for the CFC inclusion year under paragraph (d)(1) of this section by the amount of the disqualified basis in the property. For purposes of determining the amount described in paragraph (d)(1) of this section, including for purposes of determining whether tangible property is dual use property within the meaning of paragraph (d)(2) of this section and for purposes of determining the dual use ratio with respect to dual use property under paragraph (d)(3) of this section, the rules of § 1.951A–2(c)(5) are not taken into account.

(C) *Application to partnership specified tangible property.* In the case of partnership specified tangible property (as defined in paragraph (g)(5) of this section), paragraph (h)(2)(i)(A) of this section applies by reducing a tested income CFC's partner adjusted basis with respect to partnership specified tangible property under paragraph (g)(3)(i) of this section by the tested income CFC's share of the disqualified basis in the partnership specified tangible property. A tested income CFC's share of disqualified basis in partnership specified tangible property is the sum of the tested income CFC's proportionate share of the disqualified basis in the partnership specified tangible property determined under the principles of paragraph (g)(4) of this section and the tested income CFC's partner-specific QBAI basis in the property determined under the principles of paragraph (g)(7) of this section that is disqualified basis. For purposes of determining the amount described in paragraph (g)(3)(i) of this section, including for purposes of determining whether partnership specified tangible property is sole use partnership property within the meaning of paragraph (g)(3)(ii)(B) of this section or dual use partnership property within the meaning of paragraph (g)(3)(iii)(B) of this section and for purposes of determining the dual use ratio with respect to dual use partnership property under the principles of paragraph (d)(3) of this section, the rules of § 1.951A–2(c)(5) are not taken into account.

(ii) *Determination of disqualified basis*—(A) *In general.* Subject to the adjustments described in paragraph (h)(2)(ii)(B) of this section, the term *disqualified basis* means, with respect to property (other than property described in section 1221(a)(1)), the excess (if any) of the property's adjusted basis immediately after a disqualified transfer, over the sum of the property's adjusted basis immediately before the disqualified transfer and the qualified gain amount with respect to the disqualified transfer. For this purpose, the adjusted basis in property immediately after a disqualified transfer includes a positive adjustment to the adjusted basis in partnership property with respect to a partner under section 734(b)(1)(A) or 743(b).

(B) *Adjustments to disqualified basis*—(*1*) *Reduction or elimination of* *disqualified basis*—(*i*) *In general.* Except to the extent provided in this paragraph (h)(2)(ii)(B)(*1*), disqualified basis in property is reduced or eliminated to the extent that such basis reduces taxable income through, for example, depreciation, amortization, and taxable sales or exchanges, or is otherwise reduced or eliminated, for example, through the application of section 362(e) or 732(a) or (b). In such circumstances, in the case of property with disqualified basis and adjusted basis other than disqualified basis, disqualified basis in the property is reduced or eliminated in the same proportion that the disqualified basis bears to the total adjusted basis in the property. However, in the case of a loss from a taxable sale or exchange, disqualified basis in the property is reduced or eliminated to the extent the loss is treated as attributable to disqualified basis under § 1.951A–2(c)(5)(ii).

(*ii*) *Exception for related party transfers.* Disqualified basis in property is not reduced or eliminated by reason of any transfer of the property to a related person, except to the extent any loss recognized on the transfer of such property is treated as attributable to the disqualified basis under § 1.951A–2(c)(5)(ii), or the basis is reduced or eliminated in a nonrecognition transaction within the meaning of section 7701(a)(45), for example, through the application of section 362(e) or 732(a) or (b).

(*2*) *Increase to disqualified basis for nonrecognition transactions*—(*i*) *Increase corresponding to adjustments in other property.* If the adjusted basis in property is increased by reason of a nonrecognition transaction (as defined in section 7701(a)(45)), for example, through the application of section 732(b) or section 734(b)(1)(B), the disqualified basis in the property is increased by a proportionate share of the aggregate reduction to the disqualified basis (if any) in one or more other properties by reason of such nonrecognition transaction under paragraph (h)(2)(ii)(B)(*1*) of this section.

(*ii*) *Exchanged basis property.* Disqualified basis in exchanged basis property (as defined in section 7701(a)(44)) includes the amount of the disqualified basis in any property by reference to which the adjusted basis in the exchanged basis property was determined, in whole or in part, provided that the nonrecognition transaction giving rise to such exchanged basis did not also increase the disqualified basis in the exchanged basis property under paragraph (h)(2)(ii)(B)(*2*)(*i*) of this section.

(*iii*) *Increase by reason of section 732(d).* Disqualified basis in property is increased by the amount of a positive adjustment to the adjusted basis in property under section 732(d) to the extent that, if an election provided in section 754 were in effect at the time of the acquisition described in section 732(d), the adjusted basis in the property immediately after the acquisition would have been disqualified basis under paragraph (h)(2)(ii)(A) of this section.

(*3*) *Election to eliminate disqualified basis*—(*i*) *In general.* If an election made under this paragraph (h)(2)(ii)(B)(*3*) with respect to a controlled foreign corporation or a partnership is effective, the adjusted basis in each property with disqualified basis held by the controlled foreign corporation or the partnership is reduced by the amount of the disqualified basis and the disqualified basis in each property is eliminated. The reduction of the adjusted basis and the elimination of the disqualified basis described in the preceding sentence is treated as occurring immediately after the disqualified transfer of each property.

(*ii*) *Manner of making the election with respect to a controlled foreign corporation.* The election described in this paragraph (h)(2)(ii)(B)(*3*) with respect to a controlled foreign corporation is made by each controlling domestic shareholder (as defined in § 1.964–1(c)(5)) of the controlled foreign corporation by filing a statement as described in § 1.964–1(c)(3)(ii) with its income tax return for its taxable year that includes the last day of the taxable year of the controlled foreign corporation that includes the disqualified transfer and follow the notice requirements of § 1.964–1(c)(3)(iii). If the return for the taxable year has been filed before July 22, 2019, the statement must be included with an amended return filed within 180 days June 21, 2019. The election statement must be filed in accordance with the rules provided in forms or instructions.

(*iii*) *Manner of making the election with respect to a partnership.* The election described in this paragraph (h)(2)(ii)(B)(*3*) with respect to a partnership is made by the partnership by filing a statement as described in § 1.754–1(b)(1) for the taxable year that includes the date of the disqualified transfer. If a return for the taxable year has been filed before July 22, 2019, the statement must be included with an amended return filed within 180 days of June 21, 2019. The election statement must be filed in accordance with the rules provided in forms or instructions.

(*iv*) *Conditions of making an election.* An election under this paragraph (h)(2)(ii)(B)(*3*) with respect to a controlled foreign corporation or a partnership is not effective unless the election is made with respect to each controlled foreign corporation or partnership that holds property with disqualified basis and that is related (within the meaning of section 267(b) and 707(b)) to the controlled foreign corporation or partnership and unless any return that has been filed that is inconsistent with the elimination of the adjusted basis and disqualified basis immediately after the disqualified transfer by reason of this paragraph (h)(2)(ii)(B)(*3*) is amended to take into account the elimination of the adjusted basis and disqualified basis immediately after the disqualified transfer by reason of this paragraph (h)(2)(ii)(B)(*3*).

(C) *Definitions related to disqualified basis.* The following definitions apply for purposes of this paragraph (h)(2).

(*1*) *Disqualified period.* The term *disqualified period* means, with respect to a transferor CFC, the period beginning on January 1, 2018, and ending as of the close of the transferor CFC's last taxable year that is not a CFC inclusion year. A transferor CFC that has a CFC inclusion year beginning January 1, 2018, has no disqualified period.

(*2*) *Disqualified transfer.* The term *disqualified transfer* means a transfer of property during a transferor CFC's disqualified period by the transferor CFC to a related person in which gain was recognized, in whole or in part, by the transferor CFC.

(*3*) *Qualified gain amount.* The term *qualified gain amount* means, with respect to a disqualified transfer by a transferor CFC, the sum of the following amounts:

(*i*) The amount of gain recognized by the transferor CFC on the disqualified transfer of property that is subject to Federal income tax under section 882 (except to the extent the gain is exempt from tax pursuant to an applicable treaty obligation of the United States); and

(*ii*) Any United States shareholder's pro rata share of the gain recognized by the transferor CFC on the disqualified transfer of property (determined without regard to properly allocable deductions) taken into account in determining the United States shareholder's inclusion under section 951(a)(1)(A), excluding any amount that is described in paragraph (h)(2)(ii)(C)(*3*)(*i*) of this section.

(*4*) *Related person.* The term *related person* means, with respect to a person that transfers property, any person that bears a relationship to such person described in section 267(b) or 707(b) immediately before or immediately after the transfer.

(*5*) *Transfer.* The term *transfer* includes any disposition of property, including any sale, exchange, contribution, or distribution of property, and includes an indirect transfer. For example, a transfer of an interest in a partnership is treated as an indirect transfer of the property of the partnership and a transfer by or to a partnership is treated as an indirect transfer by or to its partners. In addition, a distribution of property to a partner with respect to which gain is recognized to the distributee partner under section 731(a)(1) is treated as an indirect transfer of the property of the partnership.

(*6*) *Transferor CFC.* The term *transferor CFC* means any controlled foreign corporation that transfers property during the disqualified period of the controlled foreign corporation.

(iii) *Examples.* The following examples illustrate the application of this paragraph (h)(2).

(A) *Example 1: Sale of asset; disqualified period*—(*1*) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1 and CFC2, each a controlled foreign corporation. Both USP and CFC2 use the calendar year as their taxable year. CFC1 uses a taxable year ending November 30. On November 1, 2018, before the start of its first CFC inclusion year, CFC1 sells Asset A, which has an adjusted basis of $10x in the hands of CFC1, to CFC2 in exchange for $100x of cash. CFC1 recognizes $90x of gain as a result of the sale ($100x − $10x), $30x of which is foreign base company income. USP includes in gross income under section 951(a)(1)(A) its pro rata share of the subpart F income of $30x. CFC1's gain is not otherwise subject to U.S. tax or taken into account in determining USP's inclusion under section 951(a)(1)(A).

(*2*) *Analysis.* The transfer of Asset A is a disqualified transfer of Asset A because it is a transfer of property (other than property described in section 1221(a)(1)) by CFC1; CFC1 and CFC2 are related persons; and the transfer occurs during the disqualified period, the period that begins on January 1, 2018, and ends the last day before the first CFC inclusion year of CFC1 (November 30, 2018). Accordingly, under paragraph (h)(2)(ii)(A) of this section, the disqualified basis in Asset A immediately after the disqualified transfer is $60x, the excess of CFC2's adjusted basis in Asset A immediately after the disqualified transfer ($100x), over the sum of CFC1's adjusted basis in Asset A immediately before the transfer ($10x) and USP's pro rata share of the gain recognized by CFC1 on the transfer of the property taken into account by USP under section 951(a)(1)(A) ($30x).

(B) *Example 2: Sale of asset; no disqualified period*—(*1*) *Facts.* The facts are the same as in paragraph (h)(2)(iii)(A)(*1*) of this section (the facts in *Example 1*), except that CFC1 uses the calendar year as its taxable year.

(*2*) *Analysis.* Because CFC1 has a taxable year beginning January 1, 2018, CFC1 has no disqualified period. Accordingly, the property was not transferred during a disqualified period of CFC1, and there is no disqualified basis with respect to the property.

(C) *Example 3: Sale of partnership interest*—(*1*) *Facts.* USP, a domestic corporation, owns all of the stock of CFC1, CFC2, and CFC3, each a controlled foreign corporation. CFC1 and CFC2 are equal partners in PRS, a partnership. PRS owns Asset B with an adjusted basis of $20x and a fair market value of $100x. PRS has a section 754 election in effect. USP, CFC2, and CFC3 all use the calendar year as their taxable year. CFC1 uses a taxable year ending November 30. On November 1, 2018, before the start of its first CFC inclusion year, CFC1 sells its interest in the partnership to CFC3 for $50x of cash. CFC1 has an adjusted basis of $10x in its partnership interest, and thus CFC1 recognizes $40x of gain as a result of the sale ($50x − $10x), none of which is foreign base company income or otherwise subject to U.S. tax. As a result of the sale, there is a $40x adjustment to the adjusted basis in Asset B with respect to CFC3 under section 743(b).

(*2*) *Analysis.* The transfer of the PRS partnership interest is a disqualified transfer of Asset B because it is an indirect transfer of property (other than property described in section 1221(a)(1)) by CFC1; CFC1 and CFC3 are related persons; and the transfer occurs during the disqualified period, the period that begins on January 1, 2018, and ends the last day before the first CFC inclusion year of CFC1 (November 30, 2018). Accordingly, under paragraph (h)(2)(ii)(A) of this section, the disqualified basis in Asset B immediately after the disqualified transfer is $40x, the excess of CFC3's share of adjusted basis in Asset B immediately after the disqualified transfer ($50x), taking into account the basis adjustment with respect to CFC3 under section 743(b), over CFC1's share of adjusted basis in the property immediately before the transfer ($10x).

(D) *Example 4: Distribution of property in liquidation of partnership interest*—(*1*) *Facts.* FC1, FC2, and FC3 are controlled foreign corporations that are equal partners in PRS, a partnership. FC1's adjusted basis in its partnership interest in PRS is $0, FC2's basis is $50x, and FC3's basis is $50x. PRS has a section 754 election in effect. PRS owns Asset C with a fair market value of $50x and an adjusted basis of $0, Asset D with a fair market value of $50x and an adjusted basis of $50x, and Asset E with a fair market value of $50x and an adjusted basis of $50x, and all the adjusted basis in Asset D and Asset E is disqualified basis. PRS distributes Asset C to FC3 in liquidation of FC3's interest in PRS. None of FC1, FC2, FC3, or PRS recognizes gain on the distribution. Under section 732(b), FC3's adjusted basis in Asset C is $50x. PRS's adjusted bases in Asset D and Asset E are decreased, in the aggregate, by $50x under section 734(b)(2)(B), which is the amount by which FC3's adjusted basis in Asset C exceeds PRS's adjusted basis in Asset C immediately before the distribution.

(*2*) *Analysis.* The distribution of Asset C is a nonrecognition transaction under section 7701(a)(45). Under paragraph (h)(2)(ii)(B)(*1*)(*i*) of this section, the disqualified bases in Asset D and Asset E are reduced, in the aggregate, by $50x. Further, under paragraph (h)(2)(ii)(B)(*2*)(*i*) of this section, the disqualified basis in Asset C is increased by $50x, the aggregate reduction to the disqualified basis in Asset D and Asset E.

(E) *Example 5: Distribution of property to a partner in basis reduction transaction*—(*1*) *Facts.* The facts are the same as in paragraph (h)(2)(iii)(D)(*1*) of this section (the facts in *Example 4*), except PRS distributes Asset D to FC1. Under section 732(a), FC1's adjusted basis in Asset D is $0. PRS's adjusted basis in Asset C is increased by $50x under section 734(b)(1)(B), which is the amount by which PRS's adjusted basis in Asset D immediately before the distribution exceeds FC1's adjusted basis in Asset D under section 732(a).

(*2*) *Analysis.* The distribution of Asset D is a nonrecognition transaction under section 7701(a)(45). Under paragraph (h)(2)(ii)(B)(*1*)(*i*) of this section, the disqualified basis in Asset D is reduced by $50x. Further, under paragraph (h)(2)(ii)(B)(*2*)(*i*) of this section, the disqualified basis in Asset C is increased by $50x, the reduction to the disqualified basis in Asset D.

(F) *Example 6: Dual use property with disqualified basis*—(*1*) *Facts.* FS is a tested income CFC and a wholesale distributor of Product A. FS owns trucks that deliver Product A. The trucks are specified tangible property. In Year 1, FS earns $250x in total gross income from inventory sales of Product A, $200x of which is included in gross tested income. The trucks have an average adjusted basis for Year 1 of $4,000x, of which $2,500x is disqualified basis. FS does not capitalize depreciation with respect to the trucks to inventory or other property held for sale. The depreciation deduction with respect to the trucks is $20x, $15x of which would be allocated and apportioned to gross tested income under § 1.951A–2(c)(3) without regard to § 1.951A–2(c)(5).

(*2*) *Analysis.* Because the trucks are used in both the production of gross tested income and the production of gross income that is not gross tested income in Year 1, the trucks are dual use property within the meaning of paragraph (d)(2) of this section. Under paragraph (h)(2)(i)(A) of this section, the disqualified basis in the trucks is disregarded for purposes of determining FS's qualified business asset investment for Year 1. Under paragraph (h)(2)(i)(B) of this section, paragraph (h)(2)(i)(A) of this section applies by reducing the amount of FS's adjusted basis in the trucks treated as adjusted basis in specified tangible property for Year 1 under paragraph (d)(1) of this section (determined without regard to § 1.951A–2(c)(5)) by the amount of the disqualified basis in the trucks. Without regard to § 1.951A–2(c)(5), FS's adjusted basis in the trucks treated as adjusted basis in specified tangible property for Year 1 under paragraph (d)(1) of this section is FS's adjusted basis in the trucks multiplied by FS's dual use ratio with respect to the trucks for Year 1. Because none of the depreciation with respect to the trucks is capitalized into inventory or other property held for sale, FS's dual use ratio with respect to the trucks is determined entirely by reference to the depreciation deduction with respect to the trucks. Therefore, under paragraph (d)(3) of this section, without regard to § 1.951A–2(c)(5), FS's dual use ratio with respect to the trucks for Year 1 is 75%, which is FS's depreciation deduction with respect to the trucks that is allocated and apportioned to gross tested income under § 1.951A–2(c)(3) for Year 1 ($15x), divided by FS's depreciation deduction with respect to the trucks for Year 1 ($20x). Accordingly, paragraph (d)(1) of this section, without regard to paragraph (h)(2)(i)(A) of this section, FS's adjusted basis in the trucks treated as adjusted basis in specified tangible property is $3,000x ($4,000x × 0.75). Under paragraph (h)(2)(i)(A) and (B) of this section, the amount of the adjusted basis in the trucks treated as adjusted basis in specified tangible property is reduced by the $2,500x of disqualified basis in the trucks. Accordingly, $500x ($3,000x − $2,500x) of FS's average adjusted basis in the trucks is taken into account under paragraph (b) of this section in determining FS's qualified business asset investment for Year 1.

§ 1.951A–4 Tested interest expense and tested interest income.

(a) *Scope.* This section provides rules for determining the tested interest expense and tested interest income of a controlled foreign corporation for purposes of determining a United States shareholder's specified interest expense under § 1.951A–1(c)(3)(iii). Paragraph (b) of this section provides definitions related to tested interest expense and tested interest income. Paragraph (c) of this section provides examples illustrating these definitions and the application of § 1.951A–1(c)(3)(iii). The amount of specified interest expense determined under § 1.951A–1(c)(3)(iii) and this section is the amount of interest expense described in section 951A(b)(2)(B).

(b) *Definitions related to specified interest expense*—(1) *Tested interest expense*—(i) *In general.* The term *tested interest expense* means, with respect to a controlled foreign corporation for a CFC inclusion year, interest expense paid or accrued by the controlled foreign corporation that is allocated and apportioned to gross tested income of the controlled foreign corporation for the CFC inclusion year under § 1.951A–2(c)(3), reduced (but not below zero) by the sum of the qualified interest expense of the controlled foreign corporation for the CFC inclusion year and the tested loss QBAI amount of the controlled foreign corporation for the CFC inclusion year.

(ii) *Interest expense.* The term *interest expense* means any expense or loss that is treated as interest expense under section 163(j).

(iii) *Qualified interest expense*—(A) *In general.* The term *qualified interest expense* means, with respect to a controlled foreign corporation for a CFC inclusion year, to the extent established by the controlled foreign corporation, the interest expense paid or accrued by the controlled foreign corporation that is allocated and apportioned to gross tested income of the controlled foreign corporation for the CFC inclusion year under § 1.951A–2(c)(3), multiplied by a fraction, the numerator of which is the average of the aggregate adjusted bases as of the close of each quarter of the CFC inclusion year of qualified assets held by the controlled foreign corporation, and the denominator of which is the average of the aggregate adjusted bases as of the close of each quarter of the CFC inclusion year of all assets held by the controlled foreign corporation.

(B) *Qualified asset*—(*1*) *In general.* Except as provided in paragraph (b)(1)(iii)(B)(*2*) of this section, the term *qualified asset* means, with respect to a controlled foreign corporation for a CFC inclusion year, any obligation or financial instrument held by the controlled foreign corporation that gives rise to income included in the gross tested income of the controlled foreign corporation for the CFC inclusion year that is excluded from foreign personal holding company income (as defined in section 954(c)(1)) by reason of section 954(c)(2)(C)(ii) or section 954(h) or (i).

(*2*) *Exclusion for related party receivables.* A qualified asset does not include an asset that gives rise to interest income that is also excludible from foreign personal holding company income by reason of section 954(c)(3) or (6).

(*3*) *Look-through rule for subsidiary stock.* For purposes of paragraph (b)(1)(iii)(A) of this section, the adjusted basis in the stock of another controlled foreign corporation held by a controlled foreign corporation is treated as adjusted basis in a qualified asset in an amount equal to the adjusted basis in the stock multiplied by the fraction described in paragraph (b)(1)(iii)(A) of this section determined with respect to the assets of such other controlled foreign corporation.

(*4*) *Look-through rule for certain partnership interests.* For purposes of paragraph (b)(1)(iii)(A) of this section, if a controlled foreign corporation owns 25 percent or more of the capital or profits interest in a partnership the controlled foreign corporation is treated as holding its attributable share of any property held by the partnership, as determined under the principles of § 1.956–4(b), and the controlled foreign corporation's basis in the partnership interest is not taken into account.

(iv) *Tested loss QBAI amount.* The term *tested loss QBAI amount* means, with respect to a tested loss CFC for a CFC inclusion year, 10 percent of the amount that would be the qualified business asset investment of the tested loss CFC for the CFC inclusion year under section 951A(d) and § 1.951A–3 if the tested loss CFC were a tested income CFC for the CFC inclusion year.

(2) *Tested interest income*—(i) *In general.* The term *tested interest income* means, with respect to a controlled foreign corporation for a CFC inclusion year, interest income included in gross tested income of the controlled foreign corporation for the CFC inclusion year, reduced by qualified interest income of the controlled foreign corporation for the CFC inclusion year.

(ii) *Interest income.* The term *interest income* means any income or gain that is treated as interest income under section 163(j).

(iii) *Qualified interest income*—(A) *In general.* Except as provided in paragraph (b)(2)(iii)(B) of this section, the term *qualified interest income* means, with respect to a controlled foreign corporation for a CFC inclusion year, interest income of the controlled foreign corporation for the CFC inclusion year included in the gross tested income of the controlled foreign corporation for the CFC inclusion year that is excluded from foreign personal holding company income (as defined in section 954(c)(1)) by reason of section 954(c)(2)(C)(ii) or section 954(h) or (i).

(B) *Exclusion for related party interest.* Qualified interest income does not include interest income that is also excludable from foreign personal holding company income by reason of section 954(c)(3) or (6).

(c) *Examples.* The following examples illustrate the application of this section.

(1) *Example 1: Wholly-owned CFCs*—(i) *Facts.* A Corp, a domestic corporation, owns 100% of the single class of stock of each of FS1 and FS2, each a controlled foreign corporation. A Corp, FS1, and FS2 all use the calendar year as their taxable year. For Year 1, FS1 and FS2 are both tested income CFCs. In Year 1, FS1 pays $100x of interest to FS2. The interest expense of FS1 is allocated and apportioned to its gross tested income under § 1.951A–2(c)(3). The interest income of FS2 is excluded from its foreign personal holding company income under section 954(c)(6). Also, in Year 1, FS2 pays $100x of interest to a bank that is not related to FS2, which interest expense is allocated and apportioned to FS2's gross tested income under § 1.951A–2(c)(3). Neither FS1 nor FS2 holds qualified

assets or owns stock of another controlled foreign corporation.

(ii) *Analysis*—(A) *CFC-level determination; tested interest expense and tested interest income*—(*1*) *Tested interest expense and tested interest income of FS1.* FS1 has $100x of interest expense that is allocated and apportioned to its gross tested income under § 1.951A–2(c)(3). FS1 has no interest income. Accordingly, FS1 has $100x of tested interest expense and no tested interest income for Year 1.

(*2*) *Tested interest expense and tested interest income of FS2.* FS2 has $100x of interest expense that is allocated and apportioned to its gross tested income under § 1.951A–2(c)(3) and $100x of interest income that is included in its gross tested income. Accordingly, FS2 has $100x of tested interest expense and $100x of tested interest income for Year 1.

(B) *United States shareholder-level determination; pro rata share and specified interest expense.* Under § 1.951A–1(d)(5) and (6), A Corp's pro rata share of FS1's tested interest expense is $100x, its pro rata share of FS2's tested interest expense is $100x, and its pro rata share of FS2's tested interest income is $100x. For Year 1, A Corp's aggregate pro rata share of tested interest expense is $200x and its aggregate pro rata share of tested interest income is $100x. Accordingly, under § 1.951A–1(c)(3)(iii), A Corp's specified interest expense is $100x ($200x − $100x) for Year 1.

(2) *Example 2: Less than wholly-owned CFCs*—(i) *Facts.* The facts are the same as in paragraph (c)(1)(i) of this section (the facts in *Example 1*), except that A Corp owns 50% of the single class of stock of FS1 and 80% of the single class of stock of FS2.

(ii) *Analysis*—(A) *CFC-level determination; tested interest expense and tested interest income.* The analysis is the same as in paragraph (c)(1)(ii)(A) of this section (paragraph (A) of the analysis in *Example 1*).

(B) *United States shareholder-level determination; pro rata share and specified interest expense.* Under § 1.951A–1(d)(5) and (6), A Corp's pro rata share of FS1's tested interest expense is $50x ($100x × 0.50), its pro rata share of FS2's tested interest expense is $80x ($100x × 0.80), and its pro rata share of FS2's tested interest income is $80x ($100x × 0.80). For Year 1, A Corp's aggregate pro rata share of the tested interest expense is $130x ($50x + $80x) and its aggregate pro rata share of the tested interest income is $80x ($0 + $80x). Accordingly, under § 1.951A–1(c)(3)(iii), A Corp's specified interest expense is $50x ($130x − $80x) for Year 1.

(3) *Example 3: Operating company; qualified interest expense*—(i) *Facts.* B Corp, a domestic corporation, owns 100% of the single class of stock of each of FS1 and FS2, each a controlled foreign corporation. For Year 1, FS1 and FS2 are both tested income CFCs. B Corp, FS1, and FS2 all use the calendar year as their taxable year. FS2 is an eligible controlled foreign corporation within the meaning of section 954(h)(2). In Year 1, FS1 pays $100x of interest to FS2. The interest expense of FS1 is allocated and apportioned to its gross tested income under § 1.951A–2(c)(3). The interest income of FS2 is excluded from its foreign personal holding company income by reason of section 954(c)(6). In addition, in Year 1, FS2 receives $300x of interest from customers that are not related to FS2, which interest income is excluded from FS2's foreign personal holding company income by reason of section 954(h), and FS2 pays $300x of interest to a bank, which interest expense is allocated and apportioned to FS2's gross tested income under § 1.951A–2(c)(3). Neither FS1 nor FS2 owns stock of another controlled foreign corporation. FS1 does not hold qualified assets. FS2's average adjusted bases in qualified assets is $8,000x, and FS2's average adjusted bases in all its assets is $12,000x.

(ii) *Analysis*—(A) *CFC-level determination; tested interest expense and tested interest income*—(*1*) *Tested interest expense and tested interest income of FS1.* FS1 has $100x of interest expense that is allocated and apportioned to its gross tested income under § 1.951A–2(c)(3). FS1 has no interest income. Accordingly, FS1 has $100x of tested interest expense and no tested interest income for Year 1.

(*2*) *Tested interest expense and tested interest income of FS2.* FS2 has $300x of interest expense that is allocated and apportioned to its gross tested income under § 1.951A–2(c)(3) and $400x of interest income that is included in gross tested income. However, a portion of FS2's interest income is excluded from foreign personal holding company income by reason of section 954(h), and a portion of FS2's assets are qualified assets. As a result, in determining the tested interest income and tested interest expense of FS2, the qualified interest income and qualified interest expense of FS2 are excluded. FS2 has qualified interest income of $300x, the amount of FS2's interest income that is excluded from foreign personal holding company income by reason of section 954(h). In addition, FS2 has qualified interest expense of $200x, the amount of FS2's interest expense that is allocated and apportioned to its gross tested income under § 1.951A–2(c)(3) ($300x), multiplied by a fraction, the numerator of which is FS2's average adjusted bases in qualified assets ($8,000x), and the denominator of which is FS2's average adjusted bases in all its assets ($12,000x). Accordingly, FS2 has tested interest income of $100x ($400x − $300x) and tested interest expense of $100x ($300x − $200x) for Year 1.

(B) *United States shareholder-level determination; pro rata share and specified interest expense.* Under § 1.951A–1(d)(5) and (6), B Corp's pro rata share of FS1's tested interest expense is $100x, its pro rata share of FS2's tested interest expense is $100x, and its pro rata share of FS2's tested interest income is $100x. For Year 1, B Corp's aggregate pro rata share of tested interest expense is $200x ($100x + $100x) and its aggregate pro rata share of tested interest income is $100x ($0 + $100x). Accordingly, under § 1.951A–1(c)(3)(iii), B Corp's specified interest expense is $100x ($200x − $100x) for Year 1.

(4) *Example 4: Holding company; qualified interest expense*—(i) *Facts.* C Corp, a domestic corporation, owns 100% of the single class of stock of each of FS1 and FS2, each a controlled foreign corporation. FS2 owns 100% of the single class of stock of FS3, a qualifying insurance company within the meaning of section 953(e)(3). For Year 1, FS1, FS2, and FS3 are all tested income CFCs. C Corp, FS1, FS2, and FS3 all use the calendar year as their taxable year. In Year 1, FS1 pays $100x of interest to FS3. The interest expense of FS1 is allocated and apportioned to its gross tested income under § 1.951A–2(c)(3). The interest income of FS3 is excluded from its foreign personal holding company income by reason of section 954(c)(6). In addition, FS3 receives $300x of interest from persons that are not related to FS3, which interest income is excluded from FS's foreign personal holding company income by reason of section 954(i). Also in Year 1, FS2 pays $300x of interest to a bank, which interest expense is allocated and apportioned to FS2's gross tested income under § 1.951A–2(c)(3). None of FS1, FS2, or FS3 owns stock of another controlled foreign corporation, except for the stock of FS3 owned by FS2. FS2 has no assets other than the stock of FS3. Neither FS1 nor FS2 hold qualified assets directly. FS2's average adjusted bases in the FS3 stock is $6,000x. FS3's average adjusted bases in qualified assets is $8,000x, and FS3's average adjusted bases in all its assets is $12,000x.

(ii) *Analysis*—(A) *CFC-level determination; tested interest expense and tested interest income*—(*1*) *Tested interest expense and tested interest income of FS1.* In Year 1, FS1 has $100x of interest expense allocated and apportioned to its gross tested income under § 1.951A–2(c)(3). FS1 has no interest income. Accordingly, FS1 has $100x of tested interest expense and no tested interest income for Year 1.

(*2*) *Tested interest expense and tested interest income of FS2.* FS2 has $300x of interest expense that is allocated and apportioned to its gross tested income under § 1.951A–2(c)(3). FS2 has no interest income. While FS2 holds no qualified assets directly, $4,000x of FS3's average adjusted basis in FS3 stock is treated as adjusted basis in a qualified asset, which is equal to FS3's average adjusted basis in FS3 stock ($6,000x) multiplied by a fraction, the numerator of which is FS3's average adjusted bases in qualified assets ($8,000x), and the denominator of which is FS3's average adjusted bases in all its assets ($12,000x). Accordingly, FS2 has qualified interest expense of $200x, the amount of FS2's interest expense allocated and apportioned to FS2's gross tested income under § 1.951A–2(c)(3) ($300x), multiplied by a fraction, the numerator of which is FS2's average adjusted bases in qualified assets ($4,000x), and the denominator of which is FS2's average adjusted bases in all its assets ($6,000x). Therefore, FS2 has tested interest expense of $100x ($300x − $200x) and no tested interest income for Year 1.

(*3*) *Tested interest expense and tested interest income of FS3.* In Year 1, FS3 has no interest expense, but FS3 has $400x of interest income that is included in gross tested income. However, a portion of FS3's interest income is excluded from foreign personal holding company income by reason of section 954(i). As a result, in determining the tested interest income of FS3, the qualified interest income of FS3 is excluded. FS3 has qualified interest income of $300x, the amount of FS3's interest income that is excluded from foreign personal holding company income by reason of section 954(i). Therefore, FS2 has tested interest income of $100x ($400x − $300x) and no tested interest expense for Year 1.

(B) *United States shareholder-level determination; pro rata share and specified interest expense.* Under § 1.951A–1(d)(5) and (6), C Corp's pro rata share of FS1's tested interest expense is $100x, its pro rata share of FS2's tested interest expense is $100x, and its pro rata share of FS3's tested interest income is $100x. For Year 1, C Corp's aggregate pro rata share of tested interest expense is $200x ($100x + $100x + $0) and its aggregate pro rata share of tested interest income is $100x ($0 + $0 + $100x). Accordingly, under § 1.951A–1(c)(3)(iii), C Corp's specified interest expense is $100x ($200x − $100x) for Year 1.

(5) *Example 5: Specified interest expense and tested loss QBAI amount*—(i) *Facts.* D Corp, a domestic corporation, owns 100% of a single class of stock of each of FS1 and FS2, each a controlled foreign corporation. For Year 1, FS1 is a tested income CFC and FS2 is a tested loss CFC. D Corp, FS1, and FS2 all use the calendar year as their taxable year. In Year 1, FS1 pays $100x of interest to FS2. The interest expense of FS1 is allocated and apportioned to its gross tested income under § 1.951A–2(c)(3). The interest income of FS2 is excluded from its foreign personal holding company income by reason of section 954(c)(6). Also, in Year 1, FS2 pays $100x of interest to a bank that is not related to FS2, which interest expense is allocated and apportioned to FS2's gross tested income under § 1.951A–2(c)(3). Neither FS1 nor FS2 holds qualified assets or owns stock of another controlled foreign corporation. Because FS2 is a tested loss CFC, FS2 has no QBAI. See § 1.951A–3(b). However, if FS2 were a tested income CFC, FS2 would have QBAI of $1,000x.

(ii) *Analysis*—(A) *CFC-level determination; tested interest expense and tested interest income*—(*1*) *Tested interest expense and tested interest income of FS1.* In Year 1, FS1 has $100x of interest expense that is allocated and apportioned to its gross tested income under § 1.951A–2(c)(3). FS1 has no interest income. Accordingly, FS1 has $100x of tested interest expense and no tested interest income for Year 1.

(*2*) *Tested interest expense and tested interest income of FS2.* FS2 has $100x of interest income that is included in gross tested income. Accordingly, FS2 has $100x of tested interest income. FS2 also has 100x of interest expense that is allocated and apportioned to its gross tested income. However, because FS2 is a tested loss CFC, FS2's tested interest expense is reduced by its tested loss QBAI amount. FS2's tested loss QBAI amount is $100x (10% of $1,000x, the amount that would be QBAI if FS2 were a tested income CFC). Accordingly, FS2's tested interest expense is $0 ($100x interest expense − $100x tested loss QBAI amount) for Year 1.

(B) *United States shareholder-level determination; pro rata share and specified interest expense.* Under § 1.951A–1(d)(5) and (6), D Corp's pro rata share of FS1's tested interest expense is $100x, its pro rata share of FS2's tested interest expense is $0, and its pro rata share of FS2's tested interest income is $100x. For Year 1, D Corp's aggregate pro rata share of tested interest expense is $100x, and its aggregate pro rata share of tested interest income is $100x. Accordingly, under § 1.951A–1(c)(3)(iii), D Corp's specified interest expense is $0 ($100x − $100x) for Year 1.

§ 1.951A–5 Treatment of GILTI inclusion amounts.

(a) *Scope.* This section provides rules relating to the treatment of GILTI inclusion amounts and adjustments to earnings and profits to account for tested losses. Paragraph (b) of this section provides that a GILTI inclusion amount is treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying certain Code sections. Paragraph (c) of this section provides rules for the treatment of amounts taken into account in determining the net CFC tested income of a United States shareholder when applying sections 163(e)(3)(B)(i) and 267(a)(3)(B). Paragraph (d) of this section provides a rule for the treatment of a GILTI inclusion amount for purposes of determining the personal holding company income of a United States shareholder that is a domestic corporation under section 543.

(b) *Treatment as subpart F income for certain purposes*—(1) *In general.* A GILTI inclusion amount is treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying sections 168(h)(2)(B), 535(b)(10), 851(b), 904(h)(1), 959, 961, 962, 993(a)(1)(E), 996(f)(1), 1248(b)(1), 1248(d)(1), 1411, 6501(e)(1)(C), 6654(d)(2)(D), and 6655(e)(4).

(2) *Allocation of GILTI inclusion amount to tested income CFCs*—(i) *In general.* For purposes of the sections referred to in paragraph (b)(1) of this section, the portion of the GILTI inclusion amount of a United States shareholder for a U.S. shareholder inclusion year treated as being with respect to each controlled foreign corporation of the United States shareholder for the U.S. shareholder inclusion year is—

(A) In the case of a tested loss CFC, zero, and

(B) In the case of a tested income CFC, the portion of the GILTI inclusion amount of the United States shareholder which bears the same ratio to such amount as the United States shareholder's pro rata share of the tested income of the tested income CFC for the U.S. shareholder inclusion year bears to the aggregate amount of the United States shareholder's pro rata share of the tested income of each tested income CFC for the U.S. shareholder inclusion year.

(ii) *Example.* The following example illustrates the application of paragraph (b)(2)(i) of this section.

(A) *Facts.* USP, a domestic corporation, owns all of the stock of three controlled foreign corporations, CFC1, CFC2, and CFC3. USP, CFC1, CFC2, and CFC3 all use the calendar year as their taxable year. In Year 1, CFC1 has tested income of $100x, CFC2 has tested income of $300x, and CFC3 has tested loss of $50x. USP has no net deemed tangible income return for Year 1.

(B) *Analysis.* In Year 1, USP has net CFC tested income (as defined in § 1.951A–1(c)(2)) of $350x ($100x + $300x − $50x) and, because USP has no net deemed tangible income return, a GILTI inclusion amount (as defined in § 1.951A–1(c)(1)) of $350x ($350x − $0). The aggregate amount of USP's pro rata share of tested income is $400x ($100x from CFC1 + $300x from CFC2). Therefore, under paragraph (b)(2)(i) of this section, the portion of USP's GILTI inclusion amount treated as being with respect to CFC1 is $87.50x ($350x × $100x/$400x). The portion of USP's GILTI inclusion amount treated as being with respect to CFC2 is $262.50x ($350x × $300x/$400x). The portion of USP's GILTI inclusion amount treated as being with respect to CFC3 is $0 because CFC3 is a tested loss CFC.

(3) *Translation of portion of GILTI inclusion amount allocated to tested income CFC.* The portion of the GILTI inclusion amount of a United States shareholder allocated to a tested income CFC under section 951A(f)(2) and paragraph (b)(2)(i) of this section is translated into the functional currency of the tested income CFC using the average exchange rate for the CFC inclusion year of the tested income CFC.

(c) *Treatment as an amount includible in the gross income of a United States person.* For purposes of sections 163(e)(3)(B)(i) and 267(a)(3)(B), an item (including original issue discount) is treated as includible in the gross income of a United States person to the extent that the item increases a United States shareholder's pro rata share of tested income of a controlled foreign corporation for a U.S. shareholder inclusion year, reduces the shareholder's pro rata share of tested loss of a controlled foreign corporation for the U.S. shareholder inclusion year, or both.

(d) *Treatment for purposes of personal holding company rules.* For purposes of determining whether a United States shareholder that is a domestic corporation is a personal holding company under section 542, no portion of the adjusted ordinary gross income of such domestic corporation that consists of its GILTI inclusion amount for the U.S. shareholder inclusion year is personal holding company income (as defined in section 543(a)).

§ 1.951A–6 Adjustments related to tested losses.

(a) *Scope.* This section provides rules relating to adjustments related to tested losses. Paragraph (b) of this section provides rules that increase the earnings and profits of a tested loss CFC for purposes of section 952(c)(1)(A). Paragraph (c) of this section is reserved for a rule for tested loss adjustments.

(b) *Increase of earnings and profits of tested loss CFC for purposes of section 952(c)(1)(A).* For purposes of section 952(c)(1)(A) with respect to a CFC inclusion year, the earnings and profits of a tested loss CFC are increased by an amount equal to the tested loss of the tested loss CFC for the CFC inclusion year.

(c) [Reserved]

§ 1.951A–7 Applicability dates.

Sections 1.951A–1 through 1.951A–6 apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

■ Par. 7. Section 1.965–7 is amended by:

■ 1. Revising the last sentence of paragraph (e)(1)(i).

■ 2. Adding three sentences at the end of paragraph (e)(1)(i).

■ 3. Adding paragraph (e)(1)(iv).

■ 4. Revising paragraph (e)(2)(ii).

■ 5. Adding paragraph (e)(3).

The revisions and additions read as follows:

§ 1.965–7 Elections, payment, and other special rules.

* * * * *

(e) * * *

(1) . . . (i) . . . Except as provided in paragraph (e)(2)(ii)(B) of this section, the election for each taxable year is irrevocable. If the section 965(n) election creates or increases a net operating loss under section 172 for the taxable year, then the taxable income of the person for the taxable year cannot be less than the amount described in paragraph (e)(1)(ii) of this section. The amount of deductions equal to the amount by which a net operating loss is created or increased for the taxable year by reason of the section 965(n) election (the *deferred amount*) is not taken into account in computing taxable income or the separate foreign tax credit limitations under section 904 for that year. The source and separate category (as defined in § 1.904–5(a)) components of the deferred amount are determined in accordance with paragraph (e)(1)(iv) of this section.

* * * * *

(iv) *Effect of section 965(n) election*—(A) *In general.* The section 965(n) election for a taxable year applies solely for purposes of determining the amount of net operating loss under section 172 for the taxable year and determining the amount of taxable income for the 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. Paragraph (e)(1)(iv)(B) of this section provides a rule for coordinating the section 965(n) election's effect on section 172 with the computation of the separate foreign tax credit limitations under section 904.

(B) *Ordering rule for allocation and apportionment of deductions for purposes of the section 904 limitation.* The effect of a section 965(n) election with respect to a taxable year on the computation of the separate foreign tax credit limitations under section 904 is computed as follows and in the following order.

(*1*) Deductions, including those that create or increase a net operating loss for the taxable year by reason of the section 965(n) election, are allocated and apportioned under §§ 1.861–8 through 1.861–17 to the relevant statutory and residual groupings, taking into account the amount described in paragraph (e)(1)(ii) of this section. The source and separate category of the net operating loss carryover or carryback to the taxable year, if any, is determined under the rules of § 1.904(g)–3(b), taking into account the amount described in paragraph (e)(1)(ii) of this section. Therefore, if the amount of the net operating loss carryover or carryback to the taxable year (as reduced by reason of the section 965(n) election) exceeds the U.S. source loss component of the net operating loss that is carried over under § 1.904(g)–3(b)(3)(i), but such excess is less than the potential carryovers (or carrybacks) of the separate limitation losses that are part of the net operating loss, the potential carryovers (or carrybacks) are proportionately reduced as provided in § 1.904(g)–3(b)(3)(ii) or (iii), as applicable.

(*2*) If a net operating loss is created or increased for the taxable year by reason of the section 965(n) election, the deferred amount (as defined in paragraph (e)(1)(i) of this section) is not allowed as a deduction for the taxable year. See paragraph (e)(1)(i) of this section. The deferred amount (which is the corresponding addition to the net operating loss for the taxable year) comprises a ratable portion of the deductions (including the deduction allowed under section 965(c)) allocated and apportioned to each statutory and residual grouping under paragraph (e)(1)(iv)(B)(*1*) of this section. Such ratable portion equals the deferred amount multiplied by a fraction, the numerator of which is the deductions allocated and apportioned to the statutory or residual grouping under paragraph (e)(1)(iv)(B)(*1*) of this section and the denominator of which is the total deductions described in paragraph (e)(1)(iv)(B)(*1*) of this section. Accordingly, the fraction described in the previous sentence takes into account the deferred amount.

(*3*) Taxable income and the separate foreign tax credit limitations under section 904 for the taxable year are computed without taking into account any deferred amount. Deductions allocated and apportioned to the statutory and residual groupings under paragraph (e)(1)(iv)(B)(*1*) of this section, to the extent deducted in the taxable year rather than deferred to create or increase a net operating loss, are combined with income in the statutory and residual groupings to which those deductions are assigned in order to compute the amount of separate limitation income or loss in each separate category and U.S. source income or loss for the taxable year. Section 904(b), (f), and (g) are then applied to determine the applicable foreign tax credit limitations for the taxable year.

(2) * * *

(ii) *Timing*—(A) *In general.* 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 of this chapter to make a late election.

(B) *Transition rule.* In the case of a section 965(n) election made before June 21, 2019, the election may be revoked by attaching a statement, signed under penalties of perjury, to an amended return for the taxable year to which the election applies (the *election year*). The statement must include the person's name, taxpayer identification number, and a statement that the person revokes the section 965(n) election. The amended return to which the statement is attached must be filed by—

(*1*) In the case of a revocation with respect to an election due before

February 5, 2019, 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 taxable year following the election year; or

(*2*) In the case of a revocation with respect to an election due on or after February 5, 2019, 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 election year.

* * * * *

(3) *Examples.* The following examples illustrate the application of paragraph (e)(1)(iv) of this section.

(i) *Example 1: Net operating loss in inclusion year*—(A) *Facts.* USP, a domestic corporation, has a section 965(a) inclusion of $100x and has a section 965(c) deduction of $70x for its taxable year ending December 31, 2017. USP also includes in gross income the amount treated as dividends under section 78 of $50x (the foreign taxes deemed paid under section 960(a) for the taxable year with respect to USP's section 965(a) inclusion). The section 965(a) inclusion and the section 78 dividends are foreign source general category income. During the 2017 taxable year, USP also has U.S. source gross income of $150x and other deductions of $210x, comprising $60x of interest expense and $150x of other deductible expenses that are not definitely related to any gross income. USP's total tax book value of its assets, as determined under §§ 1.861–9(g)(2) and 1.861–9T(g)(3), is divided equally between assets that generate foreign source general category income and assets that generate U.S. source income. USP elects under paragraph (e)(1)(i) of this section 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. Before taking into account the section 965(n) election, USP's total deductions are $280x ($210x + $70x) and USP's taxable income is $20x ($100x + $50x + $150x − $70x − $210x).

(B) *Analysis*—(*1*) The amount described in paragraph (e)(1)(ii) of this section is $80x ($100x section 965(a) inclusion − $70x section 965(c) deduction + $50x section 78 dividends). Not taking into account the $80x creates a net operating loss under section 172 of $60x ($20x taxable income without regard to the section 965(n) election − $80x) for the taxable year (the ''deferred amount''). Under paragraph (e)(1)(i) of this section, the deferred amount of $60x constitutes a net operating loss and is not allowed as a deduction for the taxable year. USP's taxable income for the year is $80x ($100x + $50x + $150x − ($280x − $60x)).

(*2*) Under paragraph (e)(1)(iv)(B)(*1*) of this section, deductions are allocated and apportioned under §§ 1.861–8 through 1.861–17 to the relevant statutory and residual groupings, taking into account the amount described in paragraph (e)(1)(ii) of this section. Under § 1.861–8(b), USP's section 965(c) deduction is definitely related to the section 965(a) inclusion, and, therefore, is allocated solely to foreign source general category income. Under § 1.861–9T, based on USP's asset values, the interest expense of $60x is ratably apportioned $30x to foreign source general category income and $30x to U.S. source income. Under § 1.861–8(c)(3), based on $150x of gross U.S. source income and $150x of gross foreign source general category income, the other expenses of $150x are ratably apportioned $75x to foreign source general category income and $75x to U.S. source income. Therefore, USP's deductions allocated and apportioned to foreign source general category income are $175x ($70x + $30x + $75x) and its deductions allocated and apportioned to U.S. source income are $105x ($30x + $75x).

(*3*) Under paragraph (e)(1)(iv)(B)(*2*) of this section, the deferred amount of $60x comprises a ratable portion of the allocated and apportioned deductions. Therefore, $37.5x ($60x × $175x/$280x) of the deferred amount comprises deductions allocated and apportioned to foreign source general category income, and $22.5x ($60x × $105x/$280x) comprises deductions allocated and apportioned to U.S. source income.

(*4*) Under paragraph (e)(1)(iv)(B)(*3*) of this section, for purposes of the separate foreign tax credit limitation under section 904, foreign source general category income for the taxable year is computed without taking into account the $37.5x of the deferred amount that is attributable to the deductions allocated and apportioned to the foreign source general category. Therefore, for the 2017 taxable year, foreign source general category income is $12.5x ($100x section 965(a) inclusion + $50x section 78 dividends − ($175x deductions − $37.5x deferred amount). The remaining taxable income of $67.5x is U.S. source income.

(ii) *Example 2: Net operating loss carryover to the inclusion year*—(A) *Facts.* USP, a domestic corporation, has a section 965(a) inclusion of $100x and has a section 965(c) deduction of $60x for its taxable year ending December 31, 2017. USP also includes in gross income the amount treated as dividends under section 78 of $40x (the foreign taxes deemed paid under section 960(a) for the taxable year with respect to USP's section 965(a) inclusion). The section 965(a) inclusion and the section 78 dividends are foreign source general category income. USP also has U.S. source gross income of $200x, foreign source passive category gross income of $100x, and other deductions of $140x. Under § 1.861–8(b), USP's $60x section 965(c) deduction is definitely related to the section 965(a) inclusion, and, therefore, is allocated solely to foreign source general category income. Under §§ 1.861–8 through 1.861–17, USP allocates and apportions the other $140x of deductions as follows: $40x to foreign source general category income, $40x to foreign source passive category income, and $60x to U.S. source income. USP has a net operating loss of $260x for the 2016 taxable year consisting of a $120x U.S. source loss, a $75x general category separate limitation loss, and a $65x passive category separate limitation loss. Under paragraph (e)(1)(i) of this section, USP elects to not take into account the amount described in paragraph (e)(1)(ii) of this section in determining the amount of taxable income that may be reduced by net operating loss carryovers and carrybacks to the taxable year under section 172. USP's taxable income before taking into account the section 965(n) election and any net operating loss carryover deduction is $240x:

TABLE 1 TO PARAGRAPH (e)(3)(ii)(A)

	General	Passive	U.S.	Total
Section 965(a) inclusion	$100x			$100x
Section 78 dividend	40x			40x
Other gross income		100x	200x	300x
Section 965(c) deduction	(60x)			(60x)
Other deductions	(40x)	(40x)	(60x)	(140x)
Net Income	40x	60x	140x	240x

(B) *Analysis*—(*1*) The amount described in paragraph (e)(1)(ii) of this section is $80x ($100x section 965(a) inclusion − $60x section 965(c) deduction + $40x section 78 dividends). As a result of the section 965(n) election, the net operating loss deduction allowed in the 2017 taxable year is reduced from $240x to $160x (the amount of USP's taxable income reduced by the amount described in paragraph (e)(1)(ii) of this section).

(*2*) Under paragraph (e)(1)(iv)(B)(*1*) of this section, the source and separate category of the net operating loss deduction allowed in the 2017 taxable year is determined under the rules of § 1.904(g)–3(b), taking into account the amount described in paragraph (e)(1)(ii) of this section. Under § 1.904(g)–3(b)(3)(i), first the $120x U.S. source component of the net operating loss is allocated to U.S. source income for the 2017 taxable year. Because the total tentative carryover under § 1.904(g)–3(b)(3)(ii) of $100x ($40x in the general category and $60x in the passive category) exceeds the remaining net operating loss deduction of $40x ($160x − $120x), the tentative carryover amount from each separate category is reduced proportionately, to $16x ($40x × $40x/$100x) for the general category and $24x ($40x × $60x/$100x) for the passive category. Accordingly, $16x of the general category component of the net operating loss is carried forward, and $24x of the passive category component of the net operating loss is carried forward and combined with income in the same respective categories for the 2017 taxable year. After allocation of the net operating loss carryover from 2016, USP's taxable income for the 2017 taxable year is as follows:

TABLE 1 TO PARAGRAPH (e)(3)(ii)(B)(*2*)

	General	Passive	U.S.	Total
Net income before NOL deduction	$40x	$60x	$140x	$240x
NOL deduction	(16x)	(24x)	(120x)	(160x)
Net income after NOL deduction	24x	36x	20x	80x

* * * * *

■ **Par. 8.** Section 1.1502–12 is amended by adding paragraph (s) to read as follows:

§ 1.1502–12 Separate taxable income.

* * * * *

(s) See § 1.1502–51 for rules relating to the computation of a member's GILTI inclusion amount under section 951A and related basis adjustments.

■ **Par. 9.** Section 1.1502–32 is amended by adding and reserving paragraphs (b)(3)(ii)(E) and (b)(3)(iii)(C).

§ 1.1502–32 Investment adjustments.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(E) [Reserved]

(iii) * * *

(C) [Reserved]

* * * * *

■ **Par. 10.** Section 1.1502–51 is added to read as follows:

§ 1.1502–51 Consolidated section 951A.

(a) *In general.* This section provides rules for applying section 951A to each member of a consolidated group (each, a *member*) that is a United States shareholder of any controlled foreign corporation. Paragraph (b) of this section describes the inclusion of the GILTI inclusion amount by a member of a consolidated group. Paragraphs (c) and (d) of this section are reserved. Paragraph (e) of this section provides definitions for purposes of this section. Paragraph (f) of this section provides examples illustrating the rules of this section. Paragraph (g) of this section provides an applicability date.

(b) *Calculation of the GILTI inclusion amount for a member of a consolidated group.* Each member who is a United States shareholder of any controlled foreign corporation includes in gross income in the U.S. shareholder inclusion year the member's GILTI inclusion amount, if any, for the U.S. shareholder inclusion year. See section 951A(a) and § 1.951A–1(b). The GILTI inclusion amount of a member for a U.S. shareholder inclusion year is the excess (if any) of the member's net CFC tested income for the U.S. shareholder inclusion year, over the member's net deemed tangible income return for the U.S. shareholder inclusion year, determined using the definitions provided in paragraph (e) of this section. In addition, see § 1.951A–1(e).

(c) [Reserved]

(d) [Reserved]

(e) *Definitions.* Any term used but not defined in this section has the meaning set forth in §§ 1.951A–1 through 1.951A–6. In addition, the following definitions apply for purposes of this section.

(1) *Aggregate tested income.* With respect to a member, the term *aggregate tested income* means the aggregate of the member's pro rata share (determined under § 1.951A–1(d)(2)) of the tested income of each tested income CFC for a CFC inclusion year that ends with or within the U.S. shareholder inclusion year.

(2) *Aggregate tested loss.* With respect to a member, the term *aggregate tested loss* means the aggregate of the member's pro rata share (determined under § 1.951A–1(d)(4)) of the tested loss of each tested loss CFC for a CFC inclusion year that ends with or within the U.S. shareholder inclusion year.

(3) *Allocable share.* The term *allocable share* means, with respect to a member that is a United States shareholder and a U.S. shareholder inclusion year—

(i) With respect to consolidated QBAI, the product of the consolidated QBAI of the member's consolidated group and the member's GILTI allocation ratio.

(ii) With respect to consolidated specified interest expense, the product of the consolidated specified interest expense of the member's consolidated group and the member's GILTI allocation ratio.

(iii) With respect to consolidated tested loss, the product of the consolidated tested loss of the member's consolidated group and the member's GILTI allocation ratio.

(4) *Consolidated QBAI.* With respect to a consolidated group, the term *consolidated QBAI* means the sum of each member's pro rata share (determined under § 1.951A–1(d)(3)) of the qualified business asset investment of each tested income CFC for a CFC inclusion year that ends with or within the U.S. shareholder inclusion year.

(5) *Consolidated specified interest expense.* With respect to a consolidated group, the term *consolidated specified interest expense* means the excess (if any) of—

(i) The sum of each member's pro rata share (determined under § 1.951A–1(d)(5)) of the tested interest expense of each controlled foreign corporation for a CFC inclusion year that ends with or within the U.S. shareholder inclusion year, over

(ii) The sum of each member's pro rata share (determined under § 1.951A–1(d)(6)) of the tested interest income of each controlled foreign corporation for a CFC inclusion year that ends with or within the U.S. shareholder inclusion year.

(6) *Consolidated tested income.* With respect to a consolidated group, the term *consolidated tested income* means the sum of each member's aggregate tested income for the U.S. shareholder inclusion year.

(7) *Consolidated tested loss.* With respect to a consolidated group, the term *consolidated tested loss* means the sum of each member's aggregate tested loss for the U.S. shareholder inclusion year.

(8) *Controlled foreign corporation.* The term *controlled foreign corporation* has the meaning provided in § 1.951A–1(f)(2).

(9) *Deemed tangible income return.* With respect to a member, the term *deemed tangible income return* means 10 percent of the member's allocable share of the consolidated QBAI.

(10) *GILTI allocation ratio.* With respect to a member, the term *GILTI allocation ratio* means the ratio of—

(i) The aggregate tested income of the member for the U.S. shareholder inclusion year, to

(ii) The consolidated tested income of the consolidated group of which the member is a member for the U.S. shareholder inclusion year.

(11) *GILTI inclusion amount.* With respect to a member, the term *GILTI inclusion amount* has the meaning provided in paragraph (b) of this section.

(12) *Net CFC tested income.* With respect to a member, the term *net CFC tested income* means the excess (if any) of—

(i) The member's aggregate tested income, over

(ii) The member's allocable share of the consolidated tested loss.

(13) *Net deemed tangible income return.* With respect to a member, the term *net deemed tangible income return* means the excess (if any) of the member's deemed tangible income return over the member's allocable share of the consolidated specified interest expense.

(14) through (16) [Reserved]

(17) *Qualified business asset investment.* The term qualified business asset investment has the meaning provided in § 1.951A–3(b).

(18) *Tested income.* The term *tested income* has the meaning provided in § 1.951A–2(b)(1).

(19) *Tested income CFC.* The term *tested income CFC* has the meaning provided in § 1.951A–2(b)(1).

(20) *Tested interest expense.* The term *tested interest expense* has the meaning provided in § 1.951A–4(b)(1).

(21) *Tested interest income.* The term *tested interest income* has the meaning provided in § 1.951A–4(b)(2).

(22) *Tested loss.* The term *tested loss* has the meaning provided in § 1.951A–2(b)(2).

(23) *Tested loss CFC.* The term *tested loss CFC* has the meaning provided in § 1.951A–2(b)(2).

(24) *United States shareholder.* The term *United States shareholder* has the meaning provided in § 1.951A–1(f)(6).

(25) *U.S. shareholder inclusion year.* The term *U.S. shareholder inclusion year* has the meaning provided in § 1.951A–1(f)(7).

(f) *Examples.* The following examples illustrate the rules of this section. For purposes of the examples in this section, unless otherwise stated: P is the common parent of the P consolidated group; P owns all of the single class of stock of subsidiaries USS1, USS2, and USS3, all of whom are members of the P consolidated group; CFC1, CFC2, CFC3, and CFC4 are all controlled foreign corporations (within the meaning of paragraph (e)(8) of this section); and the taxable year of all persons is the calendar year.

(1) *Example 1: Calculation of net CFC tested income within a consolidated group when all CFCs are wholly owned by a member*—(i) *Facts.* USS1 owns all of the single class of stock of CFC1. USS2 owns all of the single class of stock of each of CFC2 and CFC3. USS3 owns all of the single class of stock of CFC4. In Year 1, CFC1 has tested loss of $100x, CFC2 has tested income of $200x, CFC3 has tested loss of $200x, and CFC4 has tested income of $600x. None of CFC1, CFC2, CFC3, or CFC4 has qualified business asset investment in Year 1.

(ii) *Analysis*—(A) *Consolidated tested income and GILTI allocation ratio.* USS1 has no aggregate tested income; USS2's aggregate tested income is $200x, its pro rata share (determined under § 1.951A–1(d)(2)) of CFC2's tested income; and USS3's aggregate tested income is $600x, its pro rata share (determined under § 1.951A–1(d)(2)) of CFC4's tested income. Therefore, under paragraph (e)(6) of this section, the P consolidated group's consolidated tested income is $800x ($200x + $600x). As a result, the GILTI allocation ratios of USS1, USS2, and USS3 are 0 ($0/$800x), 0.25 ($200x/$800x), and 0.75 ($600x/$800x), respectively.

(B) *Consolidated tested loss.* Under paragraph (e)(7) of this section, the P consolidated group's consolidated tested loss is $300x ($100x + $200x), the sum of USS1's aggregate tested loss, which is equal to its pro rata share (determined under § 1.951A–1(d)(4)) of CFC1's tested loss ($100x), and USS2's aggregate tested loss, which is equal to its pro rata share (determined under § 1.951A–1(d)(4)) of CFC3's tested loss ($200x). Under paragraph (e)(3)(iii) of this section, a member's allocable share of the consolidated tested loss is the product of the consolidated tested loss of the member's consolidated group and the member's GILTI allocation ratio. Therefore, the allocable shares of the consolidated tested loss of USS1, USS2, and USS3 are $0 (0 × $300x), $75x (0.25 × $300x), and $225x (0.75 × $300x), respectively.

(C) *Calculation of net CFC tested income.* Under paragraph (e)(12) of this section, a member's net CFC tested income is the excess (if any) of the member's aggregate tested income over the member's allocable share of the consolidated tested loss. As a result, the net CFC tested income of USS1, USS2, and USS3 are $0 ($0 − $0), $125x ($200x − $75x), and $375x ($600x − $225x), respectively.

(2) *Example 2: Calculation of net CFC tested income within a consolidated group when ownership of a tested loss CFC is split between members*—(i) *Facts.* The facts are the same as in paragraph (f)(1)(i) of this section (the facts in *Example 1*), except that USS2 and USS3 each own 50% of the single class of stock of CFC3.

(ii) *Analysis.* As in paragraph (f)(1)(ii)(A) of this section (paragraph (A) of the analysis in *Example 1*), USS1 has no aggregate tested income and a GILTI allocation ratio of 0, USS2 has $200x of aggregate tested income and a GILTI allocation ratio of 0.25, and USS3 has $600x of aggregate tested income and a GILTI allocation ratio of 0.75. Additionally, the P consolidated group's consolidated tested loss is $300x (the aggregate of USS1's aggregate tested loss, which is equal to its pro rata share (determined under § 1.951A–1(d)(4)) of CFC1's tested loss ($100x); USS2's aggregate tested loss, which is equal to its pro rata share (determined under § 1.951A–1(d)(4)) of CFC3's tested loss ($100x); and USS3's aggregate tested loss, which is equal to its pro rata share (determined under § 1.951A–1(d)(4)) of CFC3's tested loss ($100x)). As a result, under paragraph (e)(12) of this section, as in paragraph (f)(1)(ii)(C) of this section (paragraph (C) of the analysis in *Example 1*), the net CFC tested income of USS1, USS2, and USS3 are $0 ($0 − $0), $125x ($200x − $75x), and $375x ($600x − $225x), respectively.

(3) *Example 3: Calculation of GILTI inclusion amount*—(i) *Facts.* The facts are the same as in paragraph (f)(1)(i) of this section (the facts in *Example 1*), except that CFC2 and CFC4 have qualified business asset investment of $500x and $2,000x, respectively, for Year 1. In Year 1, CFC1 and CFC4 each have tested interest expense (within the meaning of § 1.951A–4(b)(1)) of $25x, and none of CFC1, CFC2, CFC3, and CFC4 have tested interest income (within the meaning of § 1.951A–4(b)(2)). CFC1's tested loss of $100x and CFC4's tested income of $600x take into account the tested interest expense.

(ii) *Analysis*—(A) *GILTI allocation ratio.* As in paragraph (f)(1)(ii)(A) of this section (paragraph (A) of the analysis in *Example 1*), the GILTI allocation ratios of USS1, USS2, and USS3 are 0 ($0/$800x), 0.25 ($200x/$800x), and 0.75 ($600x/$800x), respectively.

(B) *Consolidated QBAI.* Under paragraph (e)(4) of this section, the P consolidated group's consolidated QBAI is $2,500x ($500x + $2,000x), the aggregate of USS2's pro rata share (determined under § 1.951A–1(d)(3)) of the qualified business asset investment of CFC2 and USS3's pro rata share (determined under § 1.951A–1(d)(3)) of the qualified business asset investment of CFC4. Under paragraph (e)(3)(i) of this section, a member's allocable share of consolidated QBAI is the product of the consolidated QBAI of the member's consolidated group and the member's GILTI allocation ratio. Therefore, the allocable shares of the consolidated QBAI of each of USS1, USS2, and USS3 are $0 (0 × $2,500x), $625x (0.25 × $2,500x), and $1,875x (0.75 × $2,500x), respectively.

(C) *Consolidated specified interest expense*—(*1*) *Pro rata share of tested interest expense.* USS1's pro rata share (determined under § 1.951A–1(d)(5)) of the tested interest expense of CFC1 is $25x, the amount by which the tested interest expense increases USS1's pro rata share of CFC1's tested loss (from $75x to $100x) for Year 1. USS3's pro rata share (determined under § 1.951A–1(d)(5)) of the tested interest expense of CFC4 is also $25x, the amount by which the tested interest expense decreases USS3's pro rata share of CFC4's tested income (from $625x to $600x).

(*2*) *Consolidated specified interest expense.* Under paragraph (e)(5) of this section, the P consolidated group's consolidated specified interest expense is $50x, the excess of the sum of each member's pro rata share of the tested interest expense of each controlled foreign corporation ($50x, $25x from USS1 + $25x from USS3), over the sum of each member's pro rata share of tested interest income ($0). Under paragraph (e)(3)(ii) of this section, a member's allocable share of consolidated specified interest expense is the product of the consolidated specified interest expense of the member's consolidated group and the member's GILTI allocation ratio. Therefore, the allocable shares of consolidated specified interest expense of USS1, USS2, and USS3 are $0 (0 × $50x), $12.50x (0.25 × $50x), and $37.50x (0.75 × $50x), respectively.

(D) *Calculation of deemed tangible income return.* Under paragraph (e)(9) of this section, a member's deemed tangible income return means 10 percent of the member's allocable share of the consolidated QBAI. As a result, the deemed tangible income returns of USS1, USS2, and USS3 are $0 (0.1 × $0), $62.50x (0.1 × $625x), and $187.50x (0.1 × $1,875x), respectively.

(E) *Calculation of net deemed tangible income return.* Under paragraph (e)(13) of this section, a member's net deemed tangible income return means the excess (if any) of a member's deemed tangible income return over the member's allocable share of the consolidated specified interest expense. As a result, the net deemed tangible income returns of USS1, USS2, and USS3 are $0 ($0 − $0), $50x ($62.50x − $12.50x), and $150x ($187.50x − $37.50x), respectively.

(F) *Calculation of GILTI inclusion amount.* Under paragraph (b) of this section, a member's GILTI inclusion amount for a U.S. shareholder inclusion year is the excess (if any) of the member's net CFC tested income for the U.S. shareholder inclusion year, over the shareholder's net deemed tangible income return for the U.S. shareholder inclusion year. As described in paragraph (f)(1)(ii)(C) of this section (paragraph (C) of the analysis in *Example 1*), the net CFC tested income of USS1, USS2, and USS3 are $0, $125x, and $375x, respectively. As described in paragraph (f)(3)(ii)(E) of this section (paragraph (E) of the analysis in this example), the net deemed tangible income returns of USS1, USS2, and USS3 are $0, $50x, and $150x, respectively. As a result, under paragraph (b) of this section, the GILTI inclusion amounts of USS1, USS2, and USS3 are $0 ($0 − $0), $75x ($125x − $50x), and $225x ($375x − $150x), respectively.

(g) *Applicability date*—(1) *In general.* Except as otherwise provided in this paragraph (g), this section applies to taxable years of United States shareholders for which the due date (without extensions) of the consolidated return is after June 21, 2019. However, a consolidated group may apply the rules of this section in their entirety to all taxable years of its members that are described in § 1.951A–7. In such a case, the consolidated group must apply the rules of this section to all taxable years described in § 1.951A–7 and with respect to all members.

(2) [Reserved]

■ **Par. 11.** Section 1.6038–2 is amended by revising the section heading, the introductory text of paragraph (a), and paragraph (m) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations.

(a) *Requirement of return.* Every U.S. person shall make a separate annual information return with respect to each annual accounting period (described in paragraph (e) of this section) of each foreign corporation which that person controls (as defined in paragraph (b) of this section) at any time during such annual accounting period.

* * * * *

(m) *Applicability dates*—(1) *In general.* This section applies to taxable years of foreign corporations beginning on or after October 3, 2018. See 26 CFR 1.6038–2 (revised as of April 1, 2018) for rules applicable to taxable years of foreign corporations beginning before such date.

(2) [Reserved]

■ **Par. 12.** Section 1.6038–5 is added to read as follows:

§ 1.6038–5 Information returns required of certain United States persons to report amounts determined with respect to certain foreign corporations for global intangible low-taxed income (GILTI) purposes.

(a) *Requirement of return.* Except as provided in paragraph (d) of this section, each United States person who is a United States shareholder (as defined in section 951(b)) of any controlled foreign corporation (as defined in section 957) must make an annual return on Form 8992, ''U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI),'' (or successor form) for each U.S. shareholder inclusion year (as defined in § 1.951A–1(f)(7)) setting forth the information with respect to each such controlled foreign corporation, in such form and manner, as Form 8992 (or successor form) prescribes.

(b) *Time and manner for filing.* Returns on Form 8992 (or successor form) required under paragraph (a) of this section for a taxable year must be filed with the United States person's income tax return on or before the due date (taking into account extensions) for filing that person's income tax return.

(c) *Failure to furnish information*—(1) *Penalties.* If any person required to file Form 8992 (or successor form) under section 6038 and this section fails to furnish the information prescribed on Form 8992 within the time prescribed by paragraph (b) of this section, the penalties imposed by section 6038(b) and (c) apply.

(2) *Increase in penalty.* If a failure described in paragraph (c)(1) of this section continues for more than 90 days after the date on which the Director of Field Operations, Area Director, or Director of Compliance Campus Operations mails notice of such failure to the person required to file Form 8992, such person shall pay a penalty of $10,000, in addition to the penalty imposed by section 6038(b)(1), for each 30-day period (or a fraction of) during which such failure continues after such 90-day period has expired. The additional penalty imposed by section 6038(b)(2) and this paragraph (c)(2) shall be limited to a maximum of $50,000 for each failure.

(3) *Reasonable cause*—(i) For purposes of section 6038(b) and (c) and this section, the time prescribed for furnishing information under paragraph (b) of this section, and the beginning of the 90-day period after mailing of notice by the director under paragraph (c)(2) of this section, shall be treated as being not earlier than the last day on which reasonable cause existed for failure to furnish the information.

(ii) To show that reasonable cause existed for failure to furnish information as required by section 6038 and this section, the person required to report such information must make an affirmative showing of all facts alleged as reasonable cause for such failure in a written statement containing a declaration that it is made under the penalties of perjury. The statement must be filed with the director where the return is required to be filed. The director shall determine whether the failure to furnish information was due to reasonable cause, and if so, the period of time for which such reasonable cause existed. In the case of a return that has been filed as required by this section except for an omission of, or error with respect to, some of the information required, if the person who filed the return establishes to the satisfaction of the director that the person has substantially complied with this section, then the omission or error shall not constitute a failure under this section.

(d) *Exception from filing requirement.* Any United States person that does not own, within the meaning of section 958(a), stock of a controlled foreign corporation in which the United States person is a United States shareholder for a taxable year is not required to file Form 8992. For this purpose, whether a

U.S. person owns, within the meaning of section 958(a), stock of a controlled foreign corporation is determined under § 1.951A–1(e).

(e) *Applicability date.* This section applies to taxable years of controlled foreign corporations beginning on or after October 3, 2018.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: June 6, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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Federal Register

Vol. 84, No. 120

Friday, June 21, 2019

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FEDERAL REGISTER PAGES AND DATE, JUNE

CFR PARTS AFFECTED DURING JUNE

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.

121 25499
135 25499

15 CFR

705 26751
740 25986
746 25986
801 27197

16 CFR

1112 28205
1238 28205

17 CFR

240 27708

18 CFR

401 27035
420 27035

20 CFR

200 28725

21 CFR

101 28726
117 29054
507 29054
1100 27200
1140 27200
1143 27200
1301 28212
1305 28212
1308 ....27938, 27943, 28212

Proposed Rules:

15 29112
16 27543
1107 27543

22 CFR

42 25989

25 CFR

Proposed Rules:

30 26785

26 CFR

1 ....26559, 27513, 27947, 28214, 28398, 28888, 29114
54 28888

Proposed Rules:

1 ....26605, 28426, 28668, 29288

27 CFR

Proposed Rules:

9 28442

29 CFR

2510 28888
2520 27952
2590 28888
4022 27713
4044 27713

30 CFR

Proposed Rules:

913 26802

31 CFR

501 ....27714, 29055
510 27714
515 25992
535 27714
536 27714
539 27714
541 27714
542 27714
544 27714
546 27714
547 27714
548 27714
549 27714
560 27714
561 27714
566 27714
576 27714
583 27714
584 27714
588 27714
592 27714
594 27714
595 27714
597 27714
598 27714

32 CFR

171 27201
242a 29062
242b 29062

33 CFR

100 ....25680, 26565, 27036, 27719, 28216, 28728
117 ....26764, 27036, 28730, 29063, 29065
147 27036
165 ....25993, 25995, 26567, 26569, 26571, 26572, 26574, 27036, 27039, 27531, 27720, 27956, 27958, 27959, 27960, 27962, 27964, 28219, 28221, 28223, 28225, 28732, 28734, 28736, 28738, 28741, 28743, 29066, 29067, 29069, 29070, 29072, 29073, 29076, 29078, 29080

Proposed Rules:

100 27743
117 27994
165 ....25506, 25721, 25723, 27210, 29133

34 CFR

Ch. II 25682
225 25996

Proposed Rules:

Ch. III 26623
600 27404
602 27404
603 27404
654 27404
668 27404
674 27404

36 CFR

7 29081

Proposed Rules:

220 27544

37 CFR

Proposed Rules:

201 29135

38 CFR

4 28227
17 ....25998, 26278

39 CFR

20 26345

40 CFR

52 ....26019, 26347, 26349, 27039, 27202, 28745
80 26980
180 ....26352, 27966, 28235, 28747
271 26359
300 26576
355 27533

Proposed Rules:

52 ....26030, 26031, 26041, 26047, 26049, 26053, 26057, 26379, 26804, 26806, 27046, 27049, 27053, 27055, 27212, 27559, 27566, 27996, 28132, 28776
62 29138
63 25904
70 27055
81 ....26627, 27566
180 26630
239 26632
271 27057
300 ....25509, 25725, 28259
721 27061

42 CFR

22 27968
32 27968
60 27969
412 26360
422 26578
423 ....25610, 26578
438 26578
460 25610
498 26578

Proposed Rules:

Ch. IV 27070
412 28263
413 28263
423 28450
438 27846
440 27846
460 27846
482 27069
485 27069
495 28264

44 CFR

64 27970
206 25685

45 CFR

88 26580
144 28888
146 28888
147 28888
155 28888
2105 27721

Proposed Rules:

86 27846
92 27846
147 27846
155 27846
156 27846

46 CFR

10 26580
11 26580
15 26580

47 CFR

1 ....26363, 28751
2 25685
5 25685
15 25685
27 26363
54 27973
64 ....25692, 26364
73 28751
74 ....27734, 28751
76 28761
90 29083

Proposed Rules:

1 ....25514, 26234, 26634, 27998
2 ....25514, 27998
25 25514
27 ....25514, 27998
54 27570
64 ....26379, 28264
76 28784
96 26634

48 CFR

Ch. 1 ....27494, 27497
15 27494
6106 29085

Proposed Rules:

App. D 27745
App. J 27745
Ch. 7 29140
701 27745

49 CFR

541 27205

Proposed Rules:

270 27215
271 27215
571 29145
1152 26387

50 CFR

17 26393
20 28769
21 28769
300 25493
622 ....26022, 27974
635 ....25707, 29088
648 ....26766, 27741
660 25708
665 26394
679 ....25494, 28237, 29091

Proposed Rules:

622 27576
648 26634
660 27072

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 June 14, 2019

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